

# THE GENERAL STATUTES OF NORTH CAROLINA

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1967 SUPPLEMENT

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Completely Annotated, under the Supervision of the Department  
of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF  
W. O. LEWIS, D. W. PARRISH, JR., S. G. ALRICH, W. M. WILLSON  
AND BEIRNE STEDMAN

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Volume 3A

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Volume of Main Set

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THE MICHIE COMPANY, LAW PUBLISHERS  
CHARLOTTESVILLE, VA.  
1967

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# Preface

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This Supplement to Replacement Volume 3A contains the general laws of a permanent nature enacted at the 1967 Session of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in the Cumulative Supplement to Replacement Volumes 4B and 4C.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, or to The Michie Company, Law Publishers, Charlottesville, Virginia.



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# Scope of Volume

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## **Statutes:**

Permanent portions of the general laws enacted at the 1967 Session of the General Assembly affecting Chapters 106 through 116 of the General Statutes.

## **Annotations:**

Sources of the annotations:

- North Carolina Reports volumes 265 (p. 217)-271 (p. 226).
- Federal Reporter 2nd Series volumes 347 (p. 321)-378 (p. 376).
- Federal Supplement volumes 242 (p. 513)-269 (p. 96).
- United States Reports volumes 381 (p. 532)-387 (p. 427).
- Supreme Court Reporter volumes 86-87 (p. 1608).
- North Carolina Law Review volumes 43 (p. 667)-45 (p. 809).





# The General Statutes of North Carolina

## 1967 Supplement

### VOLUME 3A

#### Chapter 106. Agriculture.

##### Article 4C.

##### Structural Pest Control Act.

- Sec.  
106-65.23. Structural Pest Control Division of Department of Agriculture created; Director; Structural Pest Control Committee created; appointment; terms; quorum.  
106-65.28. Revocation or suspension of license.  
106-65.31. Annual license fee; registration of servicemen, salesmen and estimators; identification cards.  
106-65.33. Violation of article or rules and regulations of Committee a misdemeanor.  
106-65.34. [Repealed.]

##### Article 34.

##### Animal Diseases.

##### Part 3. Hog Cholera.

- 106-322.2. Destruction of swine affected with or exposed to hog cholera; indemnity payments.

##### Part 8. Brucellosis (Bang's Disease).

- 106-388. Animals affected with, or exposed to, brucellosis declared subject to quarantine, etc.  
106-389. Brucellosis defined; program for vaccination; sale, etc., of vaccine; cooperation with the United States Department of Agriculture.  
106-390. Blood sample testing; diseased animals to be branded and quarantined; sale; removal of identification, etc.  
106-391. Civil liability of vendors.  
106-392. Sales by nonresidents.  
106-393. Duties of State Veterinarian; quarantine of animals; required testing.  
106-394. Cooperation of county boards of commissioners.

##### Sec.

- 106-395. Compulsory testing.  
106-396. Authority to promulgate and enforce rules and regulations.  
106-397. Violation made misdemeanor.  
106-398. Punishment for sale of animals known to be infected, or under quarantine.  
106-399. [Repealed.]

##### Article 35.

##### Public Livestock Markets.

- 106-406. Permits from Commissioner of Agriculture for operation of public livestock markets; application therefor; hearing on application.  
106-407. Bonds required of operators; exemption of certain market operations.  
106-407.1. North Carolina Public Livestock Market Advisory Board created; appointment; membership; duties.  
106-407.2. Revocation of permit by Board of Agriculture; restraining order for violations.  
106-409. Removal of cattle from market for slaughter and nonslaughter purposes; identification; permit needed.  
106-410. Removal of swine from market for slaughter and nonslaughter purposes; identification; permit needed; resale for feeding or breeding; out-of-state shipment.  
106-412. Admission of animals to markets; quarantine of diseased animals; sale restricted; regulation of trucks, etc.  
106-413. Sale, etc., of certain diseased animals restricted; application of article; sales by farmers.  
106-414. Transportation, sale, etc., of diseased livestock; burden of proving health; movement to laboratory; removal of identification.  
106-415. Costs of tests, serums, etc.

**Article 38.****Marketing Cotton and Other Agricultural Commodities.**

Sec.

106-446. State not liable on warehouse debts; levy on cotton or levy on grain and soybeans levied if loss is sustained.

**Article 49D.****Compulsory Poultry Inspection.**

106-549.69. Penalties; stop-sale order.

**Article 50.****Promotion of Use and Sale of Agricultural Products.**

106-559. Basis of referendum; eligibility for participation; question submitted; special provisions for North Carolina Cotton Promotion Association.

**Article 50C.****Promotion of Sale and Use of Tobacco.**

106-568.18. Policy as to joint action of farmers.  
 106-568.19. Policy as to referendum on question of annual assessment.  
 106-568.20. Referendum in 1961 on assessment for next three years.  
 106-568.21. Effect of more than one-third vote against assessment in 1961 referendum.

Sec.

106-568.22. Effect of two-thirds vote for assessment in 1961 referendum.  
 106-568.23. Regulations as to 1961 referendum; notice to farm organizations and county agents.  
 106-568.24. Distribution of ballots; arrangements for holding 1961 referendums; declaration of results.  
 106-568.25. Question at 1961 referendum.  
 106-568.26. Collection of assessments; custody and use of funds.  
 106-568.27. Required affirmative vote of directors of Tobacco Associates, Incorporated.  
 106-568.28. Right of farmers dissatisfied with assessments; time for demanding refund.  
 106-568.29. Subsequent referendum after defeat of assessment.  
 106-568.30. Referendum as to continuance of assessments approved at prior referendum.  
 106-568.31. Filing and publication of financial statement by treasurer of Tobacco Associates, Incorporated.  
 106-568.32. Levy of assessment for 1959, 1960 and 1961 authorized.  
 106-568.33. Effect of article on prior acts.

**ARTICLE 1.***Department of Agriculture.***Part 2. Commissioner of Agriculture.**

**§ 106-11. Salary of Commissioner of Agriculture.**—The salary of the Commissioner of Agriculture shall be twenty thousand dollars (\$20,000.00) a year, payable monthly. (1901, c. 479, s. 4; 1905, c. 529; Rev., s. 2749; 1907, c. 887, s. 1; 1913, c. 58; C. S., s. 3872; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 338; 1943, c. 499, s. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 4; 1967, c. 1130; c. 1237, s. 4.)

**Editor's Note.**—

Both 1967 amendments increased the salary from \$18,000 to \$20,000. The first amendatory act provided that the increase

should be effective Jan. 1, 1969, and the second amendatory act was made effective July 1, 1967.

**ARTICLE 4B.***Aircraft Application of Pesticides.***§ 106-65.14. Licenses.**

**Local Modification.**—Henderson: 1967, c. 1140.



## ARTICLE 4C.

*Structural Pest Control Act.*

**§ 106-65.23. Structural Pest Control Division of Department of Agriculture created; Director; Structural Pest Control Committee created; appointment; terms; quorum.**—There is hereby created, within the North Carolina Department of Agriculture, a new division thereof, to be known as the Structural Pest Control Division of said Department.

The Commissioner of Agriculture is hereby authorized to appoint a Director of said Division whose duties and authority shall be determined by the Commissioner, subject to approval of the Board of Agriculture and subject to the provisions of this article. Said Director shall act as secretary to the Structural Pest Control Committee herein created.

There is hereby created a Structural Pest Control Committee to be composed of five members. The Commissioner of Agriculture shall designate one member of the Board of Agriculture who shall serve as an ex officio member of said Committee for such time as he is a member of the Board of Agriculture. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture to serve on said Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of said University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of said University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of his choice to serve on said Committee at the pleasure of the dean. The Governor shall appoint two members of said Committee who are actively engaged in the pest control industry and who are residents of the State of North Carolina but not affiliates of the same company. The initial Committee members from the pest control industry shall be appointed as follows: One for a two-year term and one for a three-year term. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant. A member of the Committee appointed by the Governor shall not succeed himself.

It shall be the duty of the Structural Pest Control Committee, in addition to the duties imposed by G.S. 106-65.36, in addition to conducting hearings relating to the suspension and revocation of licenses issued under this article, and in addition to making rules and regulations pursuant to G.S. 106-65.29, to report annually to the Board of Agriculture the results of all hearings conducted by the Committee and to report the financial status of this Division of the Department of Agriculture.

The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.

Each member of the Committee who is not an employee of the State shall receive twenty dollars (\$20.00) per diem while actually engaged in the business of the Committee. All members of the Committee and the attorney assigned to said Committee by the Attorney General shall be entitled to receive eight cents (8¢) per mile for travel and such other expenses as are incurred in the performance of their duties.

Three members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without three votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that three members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

All members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee. (1955, c. 1017; 1957, c. 1243, s. 1; 1967, c. 1184, s. 1.)

**Editor's Note.** — The 1967 amendment rewrote this section.

Session Laws 1967, c. 1184, s. 14, provides: "The terms of all members of the Structural Pest Control Commission shall expire on June 30, 1967."

Session Laws 1967, c. 1184, s. 15, provides: "All rules and regulations heretofore made by the Structural Pest Control Com-

mission not inconsistent with the provisions of article 4C of chapter 106 of the General Statutes and this act, shall remain in full force and effect until repealed, revised, or amended pursuant to the provisions of said article and this act or until declared invalid by a court of competent jurisdiction."

#### § 106-65.24. Definitions.

- (2) The term "branch office," as used in this article, shall mean and include any place of doing business which has two or more employees engaged full time in the control of insect pests, rodents, or wood-destroying organisms.
- (3) "Committee" means the Structural Pest Control Committee.
- (11) "Director" means the Director of the Structural Pest Control Division of the Department of Agriculture. (1955, c. 1017; 1957, c. 1243, s. 2; 1967, c. 1184, ss. 2, 3.)

**Editor's Note.** — The 1967 amendment rewrote subdivision (3) and added subdivision (11).

Subdivision (2) is set out in the Supple-

ment to correct an error appearing in the replacement volume.

As the rest of the section was not affected by the amendment, it is not set out.

#### § 106-65.25. Phases of structural pest control; license required; exceptions.—(a) Structural pest control is divided into the following phases:

- (1) Control of wood-destroying organisms by any method other than fumigation,
- (2) Control of household pests by any method other than fumigation,
- (3) Fumigation,

and a license is required for each such phase, and it shall be unlawful for any person, firm, corporation, association or any organization or combination thereof to engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control unless there shall first be secured a valid license therefor, issued by the Structural Pest Control Committee, and signed by the Commissioner of Agriculture.

(1967, c. 1184, s. 4.)

**Editor's Note.** — The 1967 amendment substituted "Committee, and signed by the Commissioner of Agriculture" for "Commission" at the end of subsection (a).

As subsection (b) was not affected by the amendment, it is not set out.

**§ 106-65.26. Qualifications of applicants for license.**—Any applicant for a license must present satisfactory evidence to the Committee concerning his qualifications for such license. The basic qualifications shall be:

- (1) Two years as an employee or owner-operator in the field of structural pest control, control of wood-destroying organisms or fumigation, for which license is applied, or



- (2) One or more years training in specialized pest control, control of wood-destroying organisms or fumigation under university or college supervision may be substituted for practical experience (each year of such training may be substituted for one-half year of practical experience), or
- (3) A degree from a recognized college or university with training in entomology, sanitary or public health engineering, or related subjects, including sufficient practical experience of structural pest control work under proper supervision.
- (4) All applicants must have practical experience and knowledge of practical and scientific facts underlying the practice of structural pest control, control of wood-destroying organisms or fumigation.

No person who has within five years of his application been convicted of or has entered a plea of guilty or a plea of nolo contendere to a crime charged involving moral turpitude or who has forfeited bond to a charge involving moral turpitude, shall be entitled to take an examination or the issuance of a license under the provisions of this article. (1955, c. 1017; 1967, c. 1184, s. 5.)

**Editor's Note.** — The 1967 amendment in the first sentence and added the last substituted "Committee" for "Commission" paragraph.

**§ 106-65.27. Examination of applicants; fee; license not transferable.**—(a) All applicants must pass a satisfactory oral or written examination, or both oral and written examination. Frequency of such examination shall be in the discretion of the Committee, consideration being given to the number of applications received, provided that a minimum of two examinations shall be given annually. The examination will cover phases of structural pest control (control of wood-destroying organisms, household pests and fumigation).

An applicant shall submit with his application for examination an examination fee of twenty-five dollars (\$25.00) for each of the phases of structural pest control in which he chooses to be examined. An examination for one or more phases of structural pest control may be taken at the same time. If an applicant fails to pass an examination for one or more phases of structural pest control, he shall be entitled to take one additional examination, at a regularly scheduled examination, without the payment of another examination fee.

(b) A license shall not be transferable. When there is a transfer of ownership, management or operation of a business of a licensee hereunder, the new owner, manager or operator (as the case may be) whether it be an individual, firm, partnership, corporation, or other entity, shall have 90 days from such sale or transfer, or until the next meeting of the Committee following the expiration of said 90-day period, to have a qualified licensee to operate said business. (1955, c. 1017; 1967, c. 1184, s. 6.)

**Editor's Note.** — The 1967 amendment rewrote this section.

**§ 106-65.28. Revocation or suspension of license.**—(a) Any license may be revoked or suspended by a majority vote of the Committee, after notice and hearing, as provided in G.S. 106-65.32, for any one or more of the following causes:

- (1) Misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage; or the use of methods or materials which are not reasonably suitable for the purpose contracted.
- (2) Failure of the licensee to give the Committee, the Director, or their authorized representatives, upon request, true information regarding methods and materials used, or work performed.

- (3) Failure of the license holder to make registrations herein required or failure to pay the registration fees.
- (4) Any misrepresentation in the application for a license.
- (5) Wilful violation of any rule or regulation adopted pursuant to this article.

(b) Suspension of any license under the provisions of this article shall not be for less than 10 days nor more than two years, in the discretion of the Committee.

If a license is suspended or revoked under the provisions hereof, the licensee shall within five days of such suspension or revocation, surrender all licenses and identification cards issued thereunder to the Director or his authorized representative.

Any licensee whose license is revoked under the provisions of this article shall not be eligible to apply for a new license hereunder until two years have elapsed from the date of the order revoking said license, or if an appeal is taken from said order of revocation, two years from the date of the order or final judgment sustaining said revocation. (1955, c. 1017; 1967, c. 1184, s. 7.)

**Editor's Note.** — The 1967 amendment designated the provisions of this section as subsection (a), rewrote the introductory language and subdivision (2) of such subsection, added subdivision (5) therein, and added subsection (b).

**§ 106-65.29. Rules and regulations.** — The Committee is hereby authorized and empowered to make such reasonable rules and regulations with regard to structural pest control as may be necessary to protect the interests, health and safety of the public. Such rules and regulations shall not become effective until a public hearing shall have been held and notification of such hearing shall have been given to all licensees. (1955, c. 1017; 1967, c. 1184, s. 8.)

**Editor's Note.** — The 1967 amendment substituted "Committee" for "Commission" in the first sentence.

**§ 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.**—For the enforcement of the provisions of this article, the Director is authorized, subject to the approval of the Commissioner and Board of Agriculture, to appoint one or more qualified inspectors and such other employees as are necessary in order to carry out and enforce the provisions of this article. The inspectors shall be known as "Structural Pest Control Inspectors." The Director, subject to the approval of the Commissioner of Agriculture and the Board of Agriculture, shall enforce the provisions of this article by making or causing to be made periodical and unannounced inspections of work done by licensees under this article engaged in any one or more phases of structural pest control as defined in G.S. 106-65.25. The Director shall cause the prompt and diligent investigation of all reports of violations of the provisions of this article and the rules and regulations adopted pursuant to the provisions hereof; provided, however, no inspection shall be made by the Director, or inspectors, of any property without first securing the permission of the owner or occupant thereof.

Every nonresident owner of a business performing any phase of structural pest control work shall designate in writing to the Director, a resident agent upon whom service or notice of process may be had to enforce the provisions of this article or any civil or criminal liabilities arising hereunder. (1955, c. 1017; 1967, c. 1184, s. 9.)

**Editor's Note.** — The 1967 amendment rewrote this section.

**§ 106-65.31. Annual license fee; registration of servicemen, salesmen and estimators; identification cards.**—The fee for the issuance of a license for any one phase of structural pest control, as the same is defined in G.S.



106-65.25, shall be one hundred dollars (\$100.00); provided, that when or any time after the fee for a license for any one phase is paid, the holder of said license may secure a license for either or both of the other two phases for an additional fee of fifty dollars (\$50.00) per license phase. Licenses shall expire on June 30 of each year and shall be renewed annually. All licensees who fail or neglect to renew any license issued under the provisions of this article on or before August 1 of each year, shall pay, in addition to the annual license fee, the sum of ten dollars (\$10.00) for each phase before his license is renewed.

Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of five dollars (\$5.00).

A license holder shall register with the Director within 30 days of employment, the names of all solicitors and servicemen (not common laborers) and shall pay a registration fee of twenty dollars (\$20.00) for each name registered, which fee shall accompany the registration. All registrations expire when a license expires. Each employee of a licensee for whom registration is made and registration fee paid shall be issued an identification card which shall be carried on the person of the employee at all times when performing any phase of structural pest control work. An identification card shall be renewed annually by payment of a renewal fee of twenty dollars (\$20.00). An identification card shall be displayed upon demand to the Director or his authorized representative, or to the person for whom any phase of structural pest control work is being performed. When an identification card is lost or destroyed, the licensee shall secure a duplicate identification card for which he shall pay a fee of one dollar (\$1.00). The licensee shall be responsible for registering and securing identification cards for all employees who are salesmen, servicemen and estimators.

It shall be unlawful for a serviceman, salesman or estimator to engage in the performance of any work covered by this article without having first secured and in his possession an identification card. It shall be unlawful for a licensee to direct, or procure any salesman, serviceman or estimator to engage in the performance of any work covered by this article without having first applied for an identification card for such employee or agent; provided, however, that the licensee shall have 30 days after employing a serviceman, salesman or estimator within which to apply for an identification card.

All registrations and applications for licenses and identification cards shall be filed with the Director. (1955, c. 1017; 1957, c. 1243, s. 4; 1967, c. 1184, s. 10.)

**Editor's Note.** — The 1967 amendment rewrote this section.

**§ 106-65.32. Proceedings and hearings under article; record of hearings and judgments; certified copy of revocation of license sent to clerk of superior court.**—Proceedings under this article shall be taken by the Structural Pest Control Committee for matters within its knowledge or upon accusations based on information of another. Said accusation must be in writing and under oath, verified by the person making the same. If by a member of the Committee, he shall be disqualified from sitting in judgment at the hearing on said accusation. Upon receiving such accusation, the Committee shall serve notice by registered mail of the time, place of hearing, and a copy of the charges upon the accused at least 30 days before the date of the hearing. The Committee for sufficient cause, in its discretion, may postpone or continue said hearing from time to time, or if after proper notice no appearance is made by the accused, it may enter judgment at the time of hearing as prescribed herein, either by suspending or revoking the license of the accused. Both the Committee and the accused may have the benefit of counsel and the right to cross-examine witnesses, to take depositions and to compel attendance of witnesses as in civil cases by subpoena issued by the secretary of the Committee under the seal of the Committee and in the name of the State of North Carolina. The testimony of all witnesses at any hearing before the Committee shall be under oath or affirmation.

The record of all hearings and judgments shall be kept by the secretary of the Committee and in the event of suspension or revocation of license, the Committee shall, within 10 days, transmit a certified copy of said judgment to the clerk of the superior court of the county of the residence of the accused or his resident agent, and the clerk shall file said judgment in the judgment docket of said county.

Any licensee may appeal to the Superior Court of Wake County the revocation or suspension of a license issued under the provisions of this article and such appeal shall be made pursuant to the provisions of article 33 of chapter 143 of the General Statutes. (1955, c. 1017; 1957, c. 1243, s. 5; 1967, c. 1184, s. 11.)

**Editor's Note.** — The 1967 amendment substituted "Committee" for "Commission" throughout this section, and added the last paragraph.

**§ 106-65.33. Violation of article or rules and regulations of Committee a misdemeanor.**—Any person violating any provision of this article or any rule or regulation of the Committee made pursuant to this article shall be guilty of a misdemeanor and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (1955, c. 1017; 1957, c. 1243, s. 6; 1967, c. 1184, s. 12.)

**Editor's Note.** — The 1967 amendment rewrote this section.

**§ 106-65.34:** Repealed by Session Laws 1967, c. 1184, s. 13.

#### ARTICLE 28B.

#### *Regulation of Production, Distribution, etc., of Milk and Cream.*

##### **§ 106-266.6. Definitions.**

Applied in State ex rel. North Carolina Milk Comm'n v. National Food Stores, 270 N.C. 323, 154 S.E.2d 548 (1967).

**§ 106-266.7. Milk Commission created; membership; chairman; compensation; quorum; duties of Commissioner of Agriculture and Director of Agricultural Experiment Station.**

The purpose of the act creating the Milk Commission was to protect the public interest in a sufficient, regularly flowing supply of wholesome milk and, to that end, to provide a fair price to the milk producer

for his product. State ex rel. North Carolina Milk Comm'n v. National Food Stores, 270 N.C. 323, 154 S.E.2d 548 (1967).

##### **§ 106-266.8. Powers of Commission.**

**Regulation of Milk Prices.**—The Commission was established as a State agency to protect the interest of the public in a regularly flowing supply of wholesome milk and is authorized, for that purpose, and that purpose only, to regulate, under proper circumstances and to a proper degree, the price of milk. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 348 (1967).

The Fourteenth Amendment to the Constitution of the United States does not forbid a state to confer upon an administrative agency the power to fix minimum and maximum retail prices to be charged for the sale of milk in grocery stores to consumers for the purpose of assuring the steady flow of an adequate supply of clean,

wholesome milk from the producing farms to the consumer. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

##### **Regulation and Fixing, etc.—**

Neither N.C. Const., Art. I, § 7, nor Art. I, § 17, forbids the legislature of this State to confer upon the Milk Commission authority to fix a uniform rate for the transportation of milk from the farm to the processing plant so as to enable the producers of milk to secure a fair price for their product. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

**Regulation of Competition among Retail Grocery Stores Not Intended.**—The Milk Commission was not established as an

agency to regulate competition among retail grocery stores per se. State ex rel. North Carolina Milk Comm'n v. National

Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

### § 106-266.15. Injunctive relief.

Applied in State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

### § 106-266.21. Sale below cost to injure or destroy competition prohibited.

**Constitutionality.**—The provisions of this section making proof of the sale of milk by a retailer below cost prima facie evidence of a purpose to injure, harass or destroy competition in the marketing of milk, is not beyond the constitutional power of the legislature. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

**Section Must Be Construed in Light of Purpose of Act.**—The purpose of the act creating the Milk Commission was to protect the public interest in a sufficient, regularly flowing supply of wholesome milk and, to that end, to provide a fair price to the milk producer for his product. This section, though added to the original act by an amendment at a subsequent session, must be construed in the light of that purpose. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

**Affidavits as to Legislature's Purpose Are Incompetent.** — Affidavits purporting to show that it was the purpose of the legislature to prevent the use of milk by grocery stores as a "loss leader" are not competent for that purpose and must be disregarded. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

**Section is Designed to Prevent Destruction of Competition in Handling Milk.**—It is the destruction of competition in the handling of milk, not in the grocery business generally, which this section was designed to prevent. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

**Not to Make Milk Commission Guardian for Retail Grocery Business.** — The Milk Commission is not to be deemed a legislatively appointed guardian for the retail grocery business, and this section is not to be given a construction leading to such result. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

**Or to Protect Retail Grocery Stores from Use of Milk as "Loss Leader."**—The

public interest sought to be protected by this section is the public's interest in the regular flow of an adequate supply of wholesome milk from the producer to the consumer, not a possible public interest in the protection of retail grocery stores from the use by other retail grocery stores of milk as a "loss leader." State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

**Courts Cannot Find That Sale of Milk below Cost Endangers Public Interest.**—There is no reasonable basis for a finding by the courts that a sale of milk by a retail grocery store at less than the cost of the milk to it will endanger the public's interest in an adequate flow of wholesome milk, nothing else appearing. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

This section does not make a sale of milk below cost in and of itself a violation of the law. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Selling milk below cost by a defendant grocery chain, not to monopolize the business of selling milk in grocery stores or elsewhere, but to attract customers to its stores in the hope that they would purchase there other items in sufficient volume to yield the defendant a profit from its entire operation, was not a violation of this section. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

**Evil Purpose Is Essential Element of Offense.**—The conduct prohibited by this section is the sale of milk, as defined in § 106-266.6, below cost, as defined in this section, coupled with the purpose on the part of the seller to injure, harass or destroy competition in the marketing of milk. The evil motive or purpose is an essential element of the offense, as truly as is the sale of milk below cost. There is no violation of this statute unless both elements concur. State ex rel. North Carolina Milk



*Comm'n v. National Food Stores, Inc.*, 270 N.C. 323, 154 S.E.2d 548 (1967).

**Such Purpose Is Intent to Eliminate Rival or Achieve Monopoly.**—The purpose required to establish a violation of this section is more than a mere intent to attract customers from those who are actual or potential customers of a rival. The intent or purpose required is a malevolent purpose to eliminate a rival or so hamper him as to achieve, or approach, a monopoly and thus control prices to the harm of the public after the rival is eliminated or crippled. *State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc.*, 270 N.C. 323, 154 S.E.2d 548 (1967).

**And Sale Below Cost Is Only Evidence of Such Purpose.**—By virtue of this section, evidence of the sale below cost is evidence of the wrongful purpose, but it is evidence only. Standing alone, it permits but does not compel a finding of the necessary motive or purpose. *State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc.*, 270 N.C. 323, 154 S.E.2d 548 (1967).

**Section Is Example of Specific Language Shifting Burden of Proof.**—This section provides an example of specific language

used by the legislature when it intended to shift the burden of proof to a defendant. *State v. Cooke*, 270 N.C. 644, 155 S.E.2d 165 (1967).

**Prima Facie Case from Proof of Such Sale May Be Rebutted.**—One charged, either in a civil or in a criminal proceeding, with the violation of this section may rebut the statutory prima facie case, resulting from proof of a sale of milk at less than cost, by proof of any fact from which absence of the evil intent to injure, harass or destroy competition may be rationally inferred. *State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc.*, 270 N.C. 323, 154 S.E.2d 548 (1967).

**Circumstances Other Than Those Specified May Be Proved in Rebuttal.**—The provision in this section that the statutory prima facie case of violation may be rebutted by proof of specified circumstances, does not mean that these are the only circumstances which may be relied upon to rebut such prima facie proof of violation. To construe the statute otherwise would raise a serious question as to its constitutionality. *State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc.*, 270 N.C. 323, 154 S.E.2d 548 (1967).

## ARTICLE 34.

### *Animal Diseases.*

#### Part 3. Hog Cholera.

§ 106-322.2. **Destruction of swine affected with or exposed to hog cholera; indemnity payments.**—If it appears in the judgment of the State Veterinarian to be necessary for the control and eradication of hog cholera to destroy or slaughter swine affected with or exposed to such disease, the State Veterinarian is authorized to order said swine destroyed or slaughtered, notwithstanding the wishes of the owners of said swine, provided that if the owner contests the diagnosis of hog cholera he shall be entitled to a review of the case by a licensed practicing veterinarian, the State Veterinarian, or his authorized representative, and the federal inspector in charge, or his authorized representative, to determine that a diagnosis of hog cholera was arrived at by the use of accepted, standard diagnostic techniques. The State Veterinarian is authorized to agree on the part of the State, in the case of swine destroyed or slaughtered on account of being affected with hog cholera or exposure to same to pay one third of the difference between the appraised value of each animal destroyed or slaughtered and the value of the salvage thereof; provided, that the State indemnity shall not be in excess of the indemnity payments made by the federal cooperating agency; provided further, that State indemnity payments shall be restricted to swine located on the farm or feed lot of the owner or authorized representative of the owner; provided further, that in no case shall any payments by the State be more than twelve dollars and fifty cents (\$12.50) for any grade swine nor more than twenty-five dollars (\$25.00) for any purebred swine and subject to available State funds. The procedure for appraisal, disposal and salvage of slaughtered or destroyed swine shall be carried out in the same manner as that required under the General



Statutes of North Carolina governing compensation for killing other diseased animals. (1963, c. 1084, s. 1; 1967, c. 105.)

**Editor's Note.**—The 1967 amendment rewrote this section.

#### Part 7. Rabies.

##### § 106-381. Confinement or leashing of vicious animals.

**Evidence Insufficient to Show Dog "Vicious".**—Evidence that a small dog frequently dashed into the street to bark at and pursue motorcycles, automobiles, and other noisy vehicles is not sufficient to justify classifying him as a "vicious" animal and does not make him "a menace to the public health." *Sink v. Moore*, 267 N.C. 344, 148 S.E.2d 265 (1966).

Canine courage in a contest for the championship of the neighborhood, together with determination to remain in possession of the field of battle "whence all but him had fled," is not evidence of a vicious character within the meaning of this section. *Sink v. Moore*, 267 N.C. 344, 148 S.E.2d 265 (1966).

#### Part 8. Brucellosis (Bang's Disease).

**§ 106-388. Animals affected with, or exposed to, brucellosis declared subject to quarantine, etc.**—It is hereby declared that the disease of animals known as brucellosis, or Bang's disease, is of an infectious and contagious nature, and animals affected with, or exposed to, or suspected of being carriers of the disease, shall be subject to quarantine and the rules and regulations of the Department of Agriculture. (1937, c. 175, s. 1; 1967, c. 511.)

**Revision of Part 8.**—Session Laws 1967, c. 511, rewrote part 8 of this article, designating the sections therein as §§ 106-388 to 106-398. Prior to the 1967 act this part consisted of §§ 106-388 to 106-399.

Session Laws 1967, c. 511, was ratified May 17, 1967, and made effective ninety days after ratification.

**§ 106-389. Brucellosis defined; program for vaccination; sale, etc., of vaccine; cooperation with the United States Department of Agriculture.**—Brucellosis shall mean the disease wherein an animal is infected with *Brucella* organisms (including *Brucella Abortus*, *B. Melitensis* and *B. Suis*), irrespective of the occurrence or absence of abortion or other symptoms. An animal shall be declared affected with brucellosis if it is classified as a reactor to a serological test for the disease, or if the *Brucella* organism has been found in the body, its secretions or discharges. The State Veterinarian is hereby authorized and empowered to set up a program for the vaccination of calves in accordance with the recommendations of the Brucellosis Committee of the United States Livestock Sanitary Association, and approved by the United States Department of Agriculture, when in his opinion vaccination is necessary for the control and eradication of brucellosis. Vaccinated animals shall be permanently identified by tattooing or other methods approved by the Commissioner of Agriculture. Above the ages designated by regulation of the Board of Agriculture, all such vaccinates classified as reactors on an official test for brucellosis, shall be considered as affected with brucellosis and shall be branded with the letter "B" in accordance with § 106-390. It shall be unlawful to sell, offer for sale, distribute, or use brucellosis vaccine or any product containing live *Brucella* organisms, except as provided for in regulations adopted by the Board of Agriculture.

The control and eradication of brucellosis in the herds of North Carolina shall be conducted as far as available funds will permit, and in accordance with the rules and regulations made by the Board of Agriculture. The Board of Agriculture is hereby authorized to cooperate with the United States Department of Agriculture in the control and eradication of brucellosis. (1937, c. 175, s. 2; 1945, c. 462, s. 1; 1953, c. 1119; 1967, c. 511.)

**§ 106-390. Blood sample testing; diseased animals to be branded and quarantined; sale; removal of identification, etc.**—All blood samples for the brucellosis test shall be drawn by persons whose qualifications are set by regulation of the Board of Agriculture. Animals from which blood is collected for a brucellosis test shall be identified by numbered ear tag, tattoo, or other manner approved by the Commissioner of Agriculture. It shall be the duty of the individual who collects the blood sample, or other designated authorized person, to brand all cattle affected with brucellosis with the letter "B" on the left hip or jaw, not less than three or more than four inches high, tag such animals with an approved brucellosis reactor ear tag, and report the same to the State Veterinarian. Cattle affected with brucellosis, and those believed by the State Veterinarian or his authorized representative to have been exposed to the disease, shall be quarantined on the owner's premises or at such other place as is mutually agreeable to the owner and the State Veterinarian or his authorized representative. No animal affected with, or exposed to, brucellosis shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same made to the State Veterinarian, provided that the Commissioner of Agriculture may permit movement of valuable animals classified as reactors, suspects or exposed directly into infected herds or to other premises under quarantine.

All cattle, swine, sheep, goats or other animals subject to infection by *Brucella* organisms, sold, or offered at public sale, except for immediate slaughter, shall be subject to test requirements established by the Board of Agriculture.

No ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for the purpose of brucellosis testing, including testing at slaughter plants, shall be removed from the animal without authorization from the State Veterinarian or his authorized representative. (1937, c. 175, s. 3; 1945, c. 462, s. 2; 1959, c. 1171; 1963, c. 489; 1967, c. 511.)

**§ 106-391. Civil liability of vendors.**—Any person, or persons, who knowingly sells, or otherwise disposes of, to another, an animal affected with brucellosis shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1937, c. 175, s. 4; 1967, c. 511.)

**§ 106-392. Sales by nonresidents.**—When cattle are sold, or otherwise disposed of, in this State, by a nonresident of this State, the person or persons on whose premises the cattle are sold, or otherwise disposed of, with his knowledge and consent, shall be equally responsible for violations of §§ 106-388 to 106-398 and the regulations of the Department of Agriculture. (1937, c. 175, s. 5; 1967, c. 511.)

**§ 106-393. Duties of State Veterinarian; quarantine of animals; required testing.**—When the State Veterinarian receives information, or has reasonable grounds to believe, that brucellosis exists in any animal, or animals, or that it has been exposed to the disease, he shall promptly cause said animal, or animals, to be quarantined on the premises of owner or such other place as is mutually agreeable to the owner and the State Veterinarian or his authorized representative. Said animals shall not be removed from premises where quarantined until quarantine has been released by State Veterinarian or his authorized representative. A permit to move such infected or exposed animals to immediate slaughter may be issued by the State Veterinarian or his authorized representative. The Board of Agriculture is empowered to make regulations to provide for compulsory testing of animals for brucellosis. (1937, c. 175, s. 6; 1967, c. 511.)

**§ 106-394. Cooperation of county boards of commissioners.** — The several boards of county commissioners in the State are hereby expressly authorized and empowered within their discretion to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the

State and United States departments of agriculture in the eradication of brucellosis in their respective counties. (1937, c. 175, s. 7; 1967, c. 511.)

**§ 106-395. Compulsory testing.**—Whenever a county board of commissioners shall cooperate with the State and the United States governments, as provided for in §§ 106-388 to 106-398, the testing of all cattle in said county shall become compulsory, and it shall be the duty of the cattle owners to give such assistance as may be necessary for the proper testing of said cattle. (1937, c. 175, s. 8; 1967, c. 511.)

**§ 106-396. Authority to promulgate and enforce rules and regulations.**—The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of §§ 106-388 to 106-398, and for the effective control and eradication of brucellosis. (1937, c. 175, s. 10; 1967, c. 511.)

**§ 106-397. Violation made misdemeanor.**—Any person or persons who shall violate any provision set forth in §§ 106-388 to 106-398, or any rule or regulation duly established pursuant to this article by the State Board of Agriculture or any inspector who shall wilfully fail to comply with any provisions of §§ 106-388 to 106-398, shall be guilty of a misdemeanor. (1937, c. 175, s. 11; 1967, c. 511.)

**§ 106-398. Punishment for sale of animals known to be infected, or under quarantine.**—Any person or persons who shall wilfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with brucellosis, or under quarantine because of suspected exposure to brucellosis, except as provided for in §§ 106-388 to 106-398, shall be guilty of a misdemeanor, and punishable by a fine of not less than fifty dollars (\$50.00) and not more than two hundred dollars (\$200.00), or imprisoned for a term of not less than 30 days or more than two years. (1937, c. 175, s. 12; 1967, c. 511.)

**§ 106-399:** Repealed by Session Laws 1967, c. 511.

**Revision of Part 8.**—See same catchline in note under § 106-388.

## Part 10. Feeding Garbage to Swine.

### § 106-405.1. Definitions.

- (1) "Garbage" means consisting in whole or in part of animal waste resulting from handling, preparing, cooking and consuming food, including the offal from or parts thereof; provided that the Commissioner of Agriculture or his authorized representative is empowered to exempt from this definition the waste resulting from the processing of seafood.

(1967, c. 872, s. 1.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, rewrote subdivision (1).

As the rest of the section was not changed by the amendment, only subdivision (1) is set out.

### § 106-405.3. Application for permit.

- (b) The Commissioner of Agriculture is hereby authorized to collect a fee of twenty-five dollars (\$25.00) for each permit issued to a garbage feeder under the provisions of this part. The fees provided for in this part shall be used exclusively for the enforcement of this part.

(1967, c. 872, s. 2.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, increased the fee in subsection (b) from \$1.00 to \$25.00.

As subsections (a) and (c) were not changed by the amendment, they are not set out.



## ARTICLE 35.

*Public Livestock Markets.*

§ 106-406. **Permits from Commissioner of Agriculture for operation of public livestock markets; application therefor; hearing on application.**—Any person, firm or corporation desiring to operate a public livestock market within the State of North Carolina shall be required to file an application with the Commissioner of Agriculture for a permit authorizing the operation of such market; provided that, those markets operating under a valid permit and in accordance with G.S. 106-406 through 106-418 at the time this article becomes effective shall be issued a license upon payment of the annual license fee and upon satisfying the requirement for bonding as specified in G.S. 106-407. An application for a permit shall include the following information:

- (1) The name and address of the applicant, name of market and a listing of the names and addresses of all persons having any financial interest in the proposed livestock market and the amount and nature of such interest, and such other information as is required to complete an application form supplied by the Commissioner; and
- (2) The plans and specifications for the facilities proposed to be built, or for existing structures.

The application for a permit shall be accompanied by a permit fee of two hundred fifty dollars (\$250.00), two hundred dollars (\$200.00) of which shall be returned to the applicant if the application is denied, plus one hundred dollars (\$100.00) annual permit fee for the first year of operation of the market, all of which shall be returned to the applicant if the application is denied.

Upon the filing of said application, the Commissioner shall determine whether all necessary information has been furnished. If all information required has not been furnished, the Commissioner shall notify the applicant by mail of the additional information needed; it shall be furnished the Commissioner by the applicant within 10 days of such notification. Upon receipt of all required information, the Commissioner shall fix the date of a hearing, on said application, to be held in Raleigh. Notice of the time and date of the hearing shall be published in a newspaper having general circulation in the county in which the livestock market is proposed to be located; said notice shall appear at least 10 days prior to such hearing. The applicant shall be notified by mail by the Commissioner at least 20 days prior to the hearing of the time and place of said hearing. The Commissioner shall also notify by mail the members of the public livestock market advisory board of the time and place of said hearing, at least 10 days before the date which the hearing will be held.

A public hearing shall be conducted by the Commissioner on said application. If, after the hearing, at which any person may appear in support or opposition thereto, the Commissioner finds that the public livestock market for which a permit or license is sought fulfills the requirements of all applicable laws, the Commissioner shall issue a nontransferable permit to the applicant. If the Commissioner denies the application, the applicant may appeal within 10 days of notice of said denial to the Board of Agriculture which can uphold or reverse the Commissioner. If the Board of Agriculture upholds the Commissioner, the applicant may appeal to the Superior Court of Wake County under the procedures of article 33, chapter 143 of the General Statutes. Unless revoked by the Board of Agriculture pursuant to any applicable law or regulation, permits will be renewed each July 1 on payment of the annual renewal fee. (1941, c. 263, s. 1; 1943, c. 724, s. 1; 1967, c. 894, s. 1.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ 106-407. **Bonds required of operators; exemption of certain market operations.**—The Commissioner of Agriculture shall require the owner of



each public livestock market issued a permit under the provisions of G.S. 106-406 to furnish a bond acceptable to the Commissioner of not less than five thousand dollars (\$5,000.00) nor more than fifty thousand dollars (\$50,000.00), in the discretion of the Commissioner, to secure the performance of all obligations incident to the operation of the public livestock market operation including prompt payment to the vendors of all livestock sold at said market; provided, that, at the discretion of the Commissioner of Agriculture, a bond shall not be required of a livestock market bonded under the Federal Packers and Stockyards Act.

The term "public livestock market" as used in this article shall not be interpreted to mean any of the following:

- (1) A market where horses and mules exclusively are sold;
- (2) A market that sells only finished livestock to be used for immediate slaughter;
- (3) A dispersal sale of livestock by a farmer, dairyman, livestock breeder, or feeder when all animals offered for sale have been owned by him at least 30 days; provided that, no more than one dispersal sale shall be held by any person, firm or corporation within any period of six months.
- (4) Purebred livestock association sales and those sales where Future Farmers of America, 4-H Clubs and similar groups, State institutions, or private fairs conduct sales of livestock. (1941, c. 263, s. 2; 1967, c. 894, s. 2.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, rewrote this section.

**§ 106-407.1. North Carolina Public Livestock Market Advisory Board created; appointment; membership; duties.**—There is hereby created the North Carolina Public Livestock Market Advisory Board composed of eight persons, all of whom shall be residents of North Carolina, who shall be appointed and the chairman designated by the Commissioner of Agriculture on or before August 1, 1967. Two members of said Board shall be livestock producers, two shall be licensed livestock market operators, one shall be a meat packer, one shall be the State Veterinarian, one shall be a duly licensed and practicing veterinarian and one shall be an employee of the markets division of the North Carolina Department of Agriculture. On the initial Board, two members shall be appointed for terms of one year, two members for terms of two years, two members for terms of three years, and two members for terms of four years. Thereafter, all members shall serve four-year terms. Any vacancy on the Board caused by death, resignation, or otherwise, shall be filled by the Commissioner of Agriculture for the expiration of the term. The terms of all members of the initial and subsequent boards shall expire on June 30 of the year in which their terms expire.

It shall be the duty of the members of the Board to attend all hearings on applications for licenses to operate public livestock markets. It shall also be the duty of the members of the Board to meet at least once each year, or more often if directed by the Commissioner, in Raleigh or such other place in North Carolina as directed by the Commissioner for the purpose of (i) discussing problems of the livestock market industry, (ii) proposing changes in the rules and regulations of the Department of Agriculture relative to public livestock markets, and (iii) making such other recommendations to the Commissioner and the Board of Agriculture as it deems in the best interest of the livestock industry of North Carolina.

Members of the Board, except members who are employees of the State, shall receive as compensation, subsistence and travel allowances, such sums as by law are provided for other commissions and boards.

The two hundred fifty dollars (\$250.00) permit fee required by this article and the one hundred dollars (\$100.00) annual permit fee required by this article shall be used to defray the expenses incurred by the members of the Board in the per-

formance of their duties and enforcement of this article. No funds of the State of North Carolina shall be used to defray any expenses of the Board. All permit fees and annual renewal fees payable under the provisions of this article shall be paid into the office of the auditor of the Department of Agriculture and shall be kept by said auditor in a separate account and disbursed by him according to the provisions of this article. (1967, c. 894, s. 3.)

**Editor's Note.**—Section 17, c. 894, Session Laws 1967, provides that the act shall become effective July 1, 1967.

**§ 106-407.2. Revocation of permit by Board of Agriculture; restraining order for violations.**—The permit authorizing the operation of a public livestock market may be revoked by the North Carolina Board of Agriculture for violation of the provisions of this article, or the rules and regulations promulgated thereunder, after the owner or operator of the public livestock market shall have been given 10 days' written notice of the alleged violation and opportunity to be heard relative thereto by the North Carolina Board of Agriculture. Such revocation may be appealed to the superior court under the provisions of article 33 of chapter 143 of the General Statutes.

If any person, firm or corporation shall operate a public livestock market in violation of the provisions of this article, or the rules and regulations promulgated by the North Carolina Board of Agriculture, or shall fail to comply with the provisions of this article, or rules and regulations promulgated thereunder, a temporary or permanent restraining order may be issued by a judge of the superior court upon application by the Commissioner of Agriculture, or his authorized representative, and the judge of the superior court shall have the same power and authority as in any other injunction proceeding, and the defendant shall have the same rights including the right of appeal, as in any other injunction proceeding heard before the superior court. (1967, c. 894, s. 4.)

**Editor's Note.**—Section 17, c. 894, Session Laws 1967, provides that the act shall become effective July 1, 1967.

**§ 106-408. Marketing facilities prescribed; records of purchases and sales; time of sales; notice.**—All public livestock markets operating under this article shall have proper facilities for handling livestock and such other equipment as specified by regulation of the North Carolina Board of Agriculture. Scales approved by the North Carolina Division of Weights and Measures shall be provided at public livestock markets where animals are bought, sold or exchanged by weight. The premises, including yards, pens, alleys, and chutes shall be cleaned and disinfected in accordance with regulations promulgated by the Board of Agriculture pursuant to the authority contained in G.S. 106-416. The market shall keep a complete legible permanent record, including the use of numbered invoices, showing the name and address of the person or firm from whom all animals are received and the name and address of the person or firm to whom sold. Symbols in lieu of names shall not be used. The weight, if sold by weight, and the price paid and the price received shall be recorded on the invoice. Such records as specified in this section shall be available for inspection to the Commissioner of Agriculture or his authorized representative during regular business hours.

The sales of all livestock at livestock auction markets shall start no later than 2:00 P.M. The sale of livestock shall be continuous until all is sold.

Each public livestock market operator operating under this article shall post notice of the day(s) of sale and the starting time in a conspicuous place on the market premises. In the event of subsequent changes in day of sale or starting time, the operator shall post notice on the premises and notify the State Vet-

erinarian in writing at least two weeks in advance of the date of change. (1941, c. 263, s. 3; 1949, c. 997, s. 1; 1961, c. 275, s. 1; 1967, c. 894, s. 5.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, rewrote this section.

**§ 106-409. Removal of cattle from market for slaughter and non-slaughter purposes; identification; permit needed.**—No cattle except those for immediate slaughter, shall be removed from any public livestock market except in accordance with this article and regulations adopted by the North Carolina Board of Agriculture. All cattle removed from any public livestock market for immediate slaughter, shall be identified in a manner approved by the Commissioner of Agriculture and the person removing same shall before removal sign a form in duplicate showing the number of cattle, their description, and where same are to be slaughtered or resold for slaughter. Cattle sold for slaughter shall be disposed of in one of the following ways:

- (1) Moved directly to a recognized slaughtering establishment for immediate slaughter.
- (2) Sold to a dealer, bonded under the Packers and Stockyards Act, who handles cattle for immediate slaughter.
- (3) Offered for resale for slaughter through a livestock auction market holding a valid permit issued under this article.

A "buying station" of a slaughterhouse or similar business not operating under a public livestock market permit shall not allow the removal of animals for any purpose other than that of immediate slaughter unless a written permit has been secured from the State Veterinarian or his authorized representative. This provision shall not apply to buying stations operated by feed lot operators buying animals for movement to their own feed lots.

Cattle sold for immediate slaughter shall be used for no other purpose unless prior written permission has been secured from the State Veterinarian or his authorized representative. No livestock market operator, or agent or employee thereof, shall allow the removal of any cattle from a market in violation of this section. (1941, c. 263, s. 4; 1943, c. 724, s. 2; 1949, c. 997, s. 2; 1967, c. 894, s. 6.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, rewrote this section.

**§ 106-410. Removal of swine from market for slaughter and non-slaughter purposes; identification; permit needed; resale for feeding or breeding; out-of-state shipment.** — No swine, except those for immediate slaughter, shall be removed from any public livestock market except in accordance with regulations adopted by the North Carolina Board of Agriculture. All swine removed from any public livestock market for immediate slaughter shall be identified in a manner prescribed by regulation adopted by the North Carolina Board of Agriculture and the person removing same shall sign a form in duplicate showing the number of hogs, their description and where they are to be slaughtered or resold for slaughter. Slaughter hogs may be disposed of in one of the following ways:

- (1) Moved directly to a recognized slaughter establishment for immediate slaughter.
- (2) Sold to a dealer, bonded under the Packers and Stockyards Act, who handles hogs for immediate slaughter.
- (3) Offered for resale for slaughter through a livestock auction market holding a valid permit issued under this article.

Swine sold for immediate slaughter shall be used for no other purpose unless prior written permission has been secured from the State Veterinarian or his authorized representative. No market operator shall allow the removal of any swine from a market in violation of this section.



Swine for breeding or feeding purposes shall not be resold in a livestock market for other than immediate slaughter within 14 days of prior sale at a livestock market unless they are identified as having been previously sold swine at the time of resale. Such identification shall contain the date and place of the prior sale and shall be furnished in writing to the market operator by the seller of said swine.

Provided, however, that the Commissioner of Agriculture may permit swine to be shipped out of the State of North Carolina, without vaccination and under the same conditions as if said swine were being delivered for immediate slaughter, for immediate delivery to holding or feeding lots in any other state when he determines that said holding or feeding lots are being operated in compliance with the laws of said state and the rules and regulations promulgated thereunder. (1941, c. 263, s. 5; 1943, c. 724, s. 3; 1949, c. 997, ss. 3, 4; 1967, c. 894, s. 7.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, rewrote all of this section except the last paragraph.

**§ 106-411. Regulation of use of livestock removed from market; swine shipped out of State.**—Any person or persons who shall remove, or whose agent or employee at the direction of the employer, shall remove from a public livestock market any cattle, swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for immediate slaughter only in compliance with this article and the applicable regulations of the Department of Agriculture. It shall be a misdemeanor for the owner of any cattle, swine or other livestock purchased for immediate slaughter, to order, direct or procure his agent or employee to transport said cattle, swine, or other livestock to any place other than a recognized slaughter plant or as provided in § 106-409 and § 106-410; and the agent or employee who transports said animal or animals shall likewise be guilty of a misdemeanor.

Provided that, it shall not be a violation of law to ship swine out of this State to holding or feeding lots as provided for in G.S. 106-410. (1941, c. 263, s. 6; 1943, c. 724, s. 4; 1949, c. 997, s. 5; 1967, c. 894, s. 8.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, rewrote this section.

**§ 106-412. Admission of animals to markets; quarantine of diseased animals; sale restricted; regulation of trucks, etc.** — No animal known to be affected with or having visible symptoms of a contagious or infectious disease shall be received or admitted into any public livestock market except upon special permit issued by the Commissioner of Agriculture or his authorized representative. All animals affected with, or exposed to, any contagious or infectious disease of animals or any animal that reacts to an official test indicating the presence of such a disease, shall be quarantined separate and apart from healthy animals and shall not be sold, traded, or otherwise disposed of except upon written permission of the Commissioner of Agriculture or his authorized representative. All animals sold for slaughter under this provision must be moved directly to a recognized slaughter establishment with State or federal meat inspection unless written permission to do otherwise is secured from the State Veterinarian or his authorized representative. The owner of the animals shall be responsible for the cost of maintaining the quarantine, the necessary treatment, and the feed and care of the animals while under quarantine and said costs shall constitute a lien against all of said animals. All trucks, trailers, and other conveyances used in transporting livestock shall be cleaned and disinfected in accordance with the regulations issued by authority of this article. (1941, c. 263, s. 7; 1967, c. 894, s. 9.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, inserted "or having visible symptoms of" in the first sentence, substituted "an official" for "a" preceding



"test" and inserted "written" preceding "permission" in the second sentence, deleted "and for immediate slaughter only" at the end of the second sentence and inserted the third sentence.

**§ 106-413. Sale, etc., of certain diseased animals restricted; application of article; sales by farmers.**—No person or persons shall sell or offer for sale, trade or otherwise dispose of any animal or animals that are affected with a contagious or infectious disease, or that the owner or person in charge or a livestock inspector or an approved veterinarian has reason to believe are so affected or exposed; provided, however, that upon written permission of the Commissioner of Agriculture or his authorized representative it shall be lawful to sell, trade, or otherwise dispose of such animals for immediate slaughter at a plant with State or federal meat inspection. The provisions of this article, including those regulations adopted by the North Carolina Board of Agriculture, shall apply to all animals sold or offered for sale on any public highway, right-of-way, street, or within one-half mile of any public livestock market, or other public place; provided, that the one-half mile provision shall not apply to animals raised and owned by a bona fide farmer who is a resident of the State of North Carolina and sold or offered for sale by him. (1941, c. 263, s. 8; 1943, c. 724, s. 5; 1967, c. 894, s. 10.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, rewrote this section.

**§ 106-414. Transportation, sale, etc., of diseased livestock; burden of proving health; movement to laboratory; removal of identification.**—No cattle, swine, or other livestock with visible symptoms of a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this State except upon written permission of the Commissioner of Agriculture or his authorized representative. The burden of proof to establish the health of any animal transported on the public highways of this State, or sold, traded, or otherwise disposed of in any public place shall be upon the vendor. Any person who shall sell, trade, or otherwise dispose of any animal affected with, or exposed to, a contagious or infectious disease, or one he has or should have reason to believe is so affected, or exposed, shall be civilly liable for all damages resulting from such sale or trade; provided that, nothing in this section shall prevent an individual who owns or has custody of sick animals from transporting sick or dead animals to a disease diagnostic laboratory operated or approved by the North Carolina Department of Agriculture if reasonable and proper precautions to prevent the exposure of other animals is taken by the owner or transporter thereof.

It shall be a misdemeanor to remove before slaughter any ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for disease control purposes unless prior written authorization has been obtained from the State Veterinarian or his authorized representative. (1941, c. 263, s. 9; 1967, c. 894, s. 11.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, rewrote this section.

**§ 106-415. Cost of tests, serums, etc.**—The cost of all tests, serums, vaccines and other medical supplies necessary for the enforcement of this article and the protection of livestock against contagious and infectious diseases shall be paid for by the owner of said livestock and the cost shall constitute a lien against all said animals; provided that, the Commissioner of Agriculture, by and with the consent of the Board of Agriculture, is hereby authorized to determine reasonable charges and costs for such tests, serums, vaccines, and other medical supplies; provided further, that an animal which shows a reaction to a test for brucellosis shall be automatically "no-saled" and resold for immediate slaughter

and the cost of the test paid by the original seller. (1941, c. 263, s. 10; 1949, c. 997, s. 6; 1957, c. 1269; 1967, c. 894, s. 12.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, deleted the former first, second and third sentences, relating to fees for permits and the term of permits, and added the second proviso.

**§ 106-416. Rules and regulations.**—The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may be necessary to carry out the provisions of this article. (1941, c. 263, s. 11; 1967, c. 894, s. 13.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, added "The" at the beginning of the section and deleted "hereafter" between "may" and "be."

**§ 106-417. Violation made misdemeanor; responsibility for health, etc., of animals.**—Any person, firm, or corporation who shall knowingly violate any provisions set forth in this article or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall wilfully fail to comply with any provisions of this article, shall be guilty of a misdemeanor, and shall be fined or imprisoned or both, in the discretion of the court. A market operating under this article shall not be responsible for the health or death of an animal sold through such market if the provisions of this article have been complied with. (1941, c. 263, s. 12; 1943, c. 724, s. 6; 1967, c. 894, s. 14.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, made minor changes in punctuation.

**§ 106-418. Exemption from health provisions.**—The health provisions of this article shall not apply to "no-sale" cattle offered for sale at a public livestock market by a bona fide farmer who has owned them at least 60 days. (1941, c. 263, s. 12½; 1967, c. 894, s. 15.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, substituted "at a public livestock market by a bona fide farmer who has owned them at least 60 days" for "by a bona fide farmer owning said stock for at least sixty days at any public livestock auction market in North Carolina."

## ARTICLE 36.

### *Plant Pests.*

**§ 106-422. Agents of Board; inspection.** — The Commissioner of Agriculture shall be the agent of the Board in enforcing these regulations, and shall have authority to designate such employees of the Department as may seem expedient to carry out the duties and exercise the powers provided by this article. Persons collaborating with the Division of Entomology may also be designated by the Commissioner of Agriculture as agents for the purpose of this article. The Commissioner of Agriculture, and any duly authorized agent of the Commissioner, shall have the authority to inspect vehicles or other means of transportation and its cargo suspected of carrying plant pests and to enter upon and inspect any premises between the hours of sunrise and sunset during every working day of the year to determine the presence or absence of injurious plant pests. Any duly authorized agent of the Commissioner shall have authority to stop or cause to be stopped on any highway or other public place, by any law-enforcement officer at the request of said authorized agent of the Commissioner, any vehicle or other means of transportation that is being used, or that the representative of the Commissioner has reasonable grounds to believe is being used, to transport or move any plant, plant product or seed in violation of the provisions of this article. (1957, c. 985; 1967, c. 976.)

**Editor's Note.** — The 1967 amendment added the last sentence.

## ARTICLE 37.

*Cotton Grading.*

**§ 106-426. Expert graders to be employed; cooperation with United States Department of Agriculture.**—The North Carolina Department of Agriculture shall have authority to employ expert cotton graders to grade cotton in this State under such rules and regulations as it may adopt. The North Carolina Department of Agriculture may seek the aid of the United States Department of Agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this article. (1915, c. 175, s. 1; C. S., s. 4903; 1967, c. 24, s. 27.)

**Editor's Note.**—The 1967 amendment, originally effective Oct. 1, 1967, substituted "it" for "they" near the end of the first sentence and "North Carolina Department of Agriculture" for "above institutions" near the beginning of the second sentence.

Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

**§ 106-427. County commissioners to cooperate.**—Any board of commissioners of any county in North Carolina is authorized and empowered to cooperate with the North Carolina Department of Agriculture in aid of the purposes of this article; and shall have authority to appropriate such sums of money as the said board shall deem wise and expedient. (1915, c. 175, s. 2; C. S., s. 4904; 1967, c. 24, s. 27.)

**Editor's Note.**—The 1967 amendment, originally effective Oct. 1, 1967, substituted "the North Carolina Department of Agriculture" for "either, or both, of the above-named institutions" near the middle of the section.

Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

**§ 106-428. Grading done at owner's request; grades as evidence.**—The expert graders employed by the North Carolina Department of Agriculture, or by the United States government, shall have full right, power, and authority to grade any cotton in North Carolina upon the request of the owner of said cotton; and said graders shall grade and classify, agreeable to and in accordance with the standards or grades of cotton which are now or may hereafter be established by the Secretary of Agriculture by virtue of any act of Congress. The grade, or classification, pronounced by said expert graders of all cotton graded by them shall be prima facie proof of the true grade or classification of said cotton, and shall be the basis of all cotton sales in this State. (1915, c. 175, s. 3; C. S., s. 4905; 1967, c. 24, s. 27.)

**Editor's Note.**—The 1967 amendment, originally effective Oct. 1, 1967, substituted "the North Carolina Department of Agriculture" for "either of the above-named institutions" near the beginning of the section.

Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

## ARTICLE 38.

*Marketing Cotton and Other Agricultural Commodities.*

**§ 106-446. State not liable on warehouse debts; levy on cotton or levy on grain and soybeans levied if loss is sustained.**—No debt or other liability shall be created against the State by reason of the lease or operation of the warehouse system created by this article or the storage of cotton or other agricultural commodities therein, it being the purpose of this article to establish a self-



sustaining system to operate as nearly as practicable at cost, without profit or loss to the State, except that expenses of supervision shall be paid by the Board of Agriculture. While it is believed that the provisions and safeguards mentioned in this article, including the bonds required and supplemental indemnifying or guarantee fund mentioned in G.S. 106-435, will insure the security of the system beyond any reasonable possibility of loss, nevertheless, in order to establish the principle that this system should be supported by those for whose special financial benefit it is established, it is hereby provided that in the eventuality the system should suffer at any time any loss not fully covered by the aforementioned bonds and indemnifying fund, the State Board of Agriculture shall have the power to make such losses on cotton good by repeating for another 12 months selected by it the special levy on ginned cotton, as prescribed in G.S. 106-435 for the two years ending June 30, 1923 and the State Board of Agriculture shall have the power to make good such losses on soybeans, corn, wheat and grain sorghum by levying an assessment of one cent (1¢) per bushel on each bushel of soybeans, corn, wheat, and grain sorghum sold by producers through commercial channels for such period of time as is necessary to pay off said loss. The assessment shall be paid by the producer of the soybeans, corn, wheat and grain sorghum to the collecting handler. The collecting handler shall be any person, firm, corporation or other legal entity who purchases soybeans, corn, wheat or grain sorghum from the producer. The collecting handler shall collect the assessment at the time he first makes any payment or any credit to the producer's account for the soybeans, corn, wheat or grain sorghum. Each collecting handler shall transmit assessment and reports on assessments to the North Carolina Department of Agriculture no later than the tenth day of the month next following the month in which the assessment was or should have been levied. The report which shall be sent to the Department of Agriculture with the assessment shall contain the following information:

- (1) Date of report;
- (2) Reporting period covered by report;
- (3) Name and address of collecting handler;
- (4) Listing of all producers from whom the collecting handler collected the assessment, and total number of bushels of each grain for each producer on which the collecting handler collected the assessment.

Failure of the collecting handler to collect the assessment shall not relieve the collecting handler of his obligation to remit the assessment to the North Carolina Department of Agriculture. Each collecting handler required to make reports pursuant to this article shall maintain such books and records as are required by the Commissioner of Agriculture or his authorized representative, and they shall be available for inspection for at least two years beyond the 12-month period of their applicability. The North Carolina Department of Agriculture shall have authority to make reasonable rules and regulations for the collection of this assessment and for the enforcement of this section. The funds collected pursuant to this section shall be held in the State treasury to the credit of the State warehouse system and shall be a part of the guarantee fund provided for in G.S. 106-435. (1919, c. 168, s. 16; 1921, c. 137, s. 16; C. S., s. 4925(p); 1941, c. 337, s. 9; 1965, c. 1029, s. 10; 1967, c. 560.)

**Editor's Note.** —

The 1967 amendment rewrote this section.

## ARTICLE 40.

*Leaf Tobacco Sales.*

**§ 106-465. Organization and membership of tobacco boards of trade; rules and regulations; price fixing prohibited.**

The very nature of leaf tobacco demands regulation of its sale, as this section recognizes and the decisions of the courts confirm. *Eagles v. Harriss Sales Corp.*, 368 F.2d 927 (4th Cir. 1966).

**Unfair Trade Regulations Are Subject to Correction by Federal Trade Commission, Not Courts.** — The Federal Trade Commission rather than the courts has the expertise, the power, and the implements to explore and correct unfair trade regulations. *Eagles v. Harriss Sales Corp.*, 368 F.2d 927 (4th Cir. 1966).

By becoming a member of a board a person consents to be bound by its reasonable regulations. *Eagles v. Harriss Sales Corp.*, 368 F.2d 927 (4th Cir. 1966).

Regulation adjusting divisions of selling time to establish an equitable market participation did not constitute conspiracy, monopoly, or an unreasonable restraint of trade. *Eagles v. Harriss Sales Corp.*, 368 F.2d 927 (4th Cir. 1966).

## ARTICLE 44.

*Unfair Practices by Handlers of Farm Products.*

**§ 106 498. Establishment of financial responsibility before permit issued; bond.**—No such permit shall be issued to any handler who is not operating on a strictly cash basis and who is incurring or may incur financial liability to any grower, until such person, firm, or corporation shall furnish to the Commissioner of Agriculture sufficient and satisfactory evidence of their ability to carry out their contract or furnish a satisfactory bond in an amount not less than ten thousand dollars (\$10,000.00). The Commissioner of Agriculture may require a new bond or additional bonds when he finds it necessary for the protection of the producer. Such bonds shall be payable to the State in favor of every contract producer or consignor of farm products, and shall be continued upon compliance with all the provisions of this article, and the faithful fulfillment of all contracts, and for the faithful accounting for and handling of produce by such handler, and for payment to the producer of the net proceeds of all consignments and sales. Any producer claiming to be injured by the fraud, deceit or willful negligence of any commission merchant or contractor, or by his failure to comply with this article or with the terms of a written contract between such parties, may bring action on the bond against both principal and surety in any court of competent jurisdiction and may recover the damages found by the court to be caused by such acts complained of. (1941, c. 359, s. 3; 1967, c. 154.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, substituted "not less than" for "not to exceed" near the end of the first sentence and deleted "up to the

ten thousand dollar (\$10,000.00) limit" following the word "bonds" in the second sentence.

## ARTICLE 49D.

*Compulsory Poultry Inspection.*

**§ 106-549.65. Labelling and marking.** — The Commissioner shall design inspection stamps or tags or paper giblet wrappings and assign establishment numbers to all poultry slaughtering establishments, poultry processing and dressing plants, and any other establishments handling poultry or poultry products, which have been approved and granted State poultry inspection service by the Commissioner, and the stamps or tags or paper giblet wrappings shall contain the words "North Carolina Inspected and Passed," or words of similar import. The carcasses of all poultry slaughtered, together with the usual cuts there-

of, and such poultry or products in loose form, encased, packaged, or canned, as may be designated by the Commissioner, shall be legibly marked or branded with an edible ink, or otherwise identified with the assigned stamp or tag or paper giblet wrapping and identification number of the slaughterhouse or processing and dressing plant or other establishment handling poultry, poultry products, all in accordance with the rules and regulations adopted by the Board. Such inspection legend shall be applied under the supervision of poultry inspection personnel.

The inspection stamp or tag or paper giblet wrapping shall be designed so as not to be in conflict with inspection stamps of the United States Department of Agriculture.

It is unlawful for any person to put or cause to be put any stamps, tag or paper giblet wrapping in, on or upon the carcass of any poultry or poultry product transported inter-county which has not been inspected according to the provisions of this article. (1961, c. 875; 1963, c. 1029; 1967, c. 1137, s. 1.)

**Editor's Note.—**

The 1967 amendment added the last paragraph.

**§ 106-549.69. Penalties; stop-sale order.**—Any person who shall violate any of the provisions of this article or the rules and regulations adopted hereunder shall be guilty of a misdemeanor and may be fined or imprisoned, or both, in the discretion of the court.

The Commissioner, or his authorized representative, shall have authority to issue a stop-sale order for any poultry or poultry product which is transported inter-county without having been inspected according to the provisions of this article. Such stop-sale order shall be delivered to the owner, manager or person in charge of any store, market or place of business where such poultry or poultry product is sold, displayed, offered for sale or stored. Any person to whom a stop-sale order has been delivered shall not sell or offer for sale any poultry or poultry product on which such stop-sale order was issued. (1961, c. 875; 1967, c. 1137, s. 2.)

**Editor's Note. —** The 1967 amendment added the last paragraph.

## ARTICLE 50.

### *Promotion of Use and Sale of Agricultural Products.*

**§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.**—With respect to any referendum conducted under the provisions of this article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least thirty days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this article shall exceed one half of one percent of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. Provided, that the assessment for the research and promotion programs of the American Dairy Association of North Carolina may be fixed on volume not to exceed six cents (6¢) per hundredweight of milk sold. (1947, c. 1018, s. 8; 1967, c. 774, s. 1; c. 1268.)

**Editor's Note. —** The first 1967 amendment substituted "thirty days" for "sixty days" in the first sentence. The second 1967 amendment added the last sentence.



**§ 106-559. Basis of referendum; eligibility for participation; question submitted; special provisions for North Carolina Cotton Promotion Association.**—Any referendum conducted under the provisions of this article may be held either on an area or state-wide basis, as may be determined by the certified agency before such referendum is called; and such referendum, either on an area or state-wide basis, may be participated in by all farmers engaged in the production of such agricultural commodity on a commercial basis, including owners of farms on which such commodity is produced, tenants and sharecroppers. In such referendum, such individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years in the amount set forth in the call for such referendum on the agricultural product covered by such referendum. Provided, that notwithstanding any other provision of this chapter, the North Carolina Cotton Promotion Association, Inc., in 1967 shall hold a referendum, pursuant to law, for the years 1969 and 1970, or for the years 1969 through 1973, in its discretion. Thereafter, the North Carolina Cotton Promotion Association, Inc. shall conduct either triennial or sexennial referendums as provided by law. (1947, c. 1018, s. 10; 1967, cc 213, 561.)

**Editor's Note.**—The first 1967 amendment added the last two sentences.

the end of the next-to-last sentence, "or for the years 1969 through 1973, in its discretion."

The second 1967 amendment added, at

**§ 106-562. Regulations as to referendum; notice to farm organizations and county agents.**—The hours, voting places, rules and regulations and the area within which such referendum herein authorized with respect to any of the agricultural commodities herein referred to shall be established and determined by the agency of the commercial growers and producers of such agricultural commodity duly certified by the Board of Agriculture as hereinbefore provided; the said referendum date, area, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published by such agency conducting the same through the medium of the public press in the State of North Carolina at least thirty days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which such agricultural product is grown. Such notice shall likewise contain a statement of the amount of annual assessment proposed to be levied—which assessment in any event shall not exceed one half of one percent of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted—and shall likewise state the method by which such assessment shall be collected and how the proceeds thereof shall be administered and the purposes to which the same shall be applied, which purposes shall be in keeping with the provisions of this article. (1947, c. 1018, s. 13; 1967, c. 774, s. 2.)

**Editor Note.**—The 1967 amendment substituted "thirty days" for "sixty days" in the first sentence.

#### ARTICLE 50A.

##### *Promotion of Agricultural Research and Dissemination of Findings.*

**§ 106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit.**—In the event two thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such assessment, then said assessment shall be collected for a period of six (6) years under rules, regulations, and methods as provided for in this article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the

manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G.S. 106-50.6 and 106-99. The Commissioner shall then remit said five cents (5¢) per ton for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of five cents (5¢) per ton by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers. (1951, c. 827, s. 8; 1967, c. 631, s. 1.)

**Editor's Note.** — The 1967 amendment substituted "six (6) years" for "three (3) years" near the beginning of the section.

**§ 106-568.10. Subsequent referenda; continuation of assessment.**—If the assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall have full power and authority to call another referendum for the purposes herein set out in the next succeeding year on the question of the annual assessment for six years. In the event the assessment carried in a referendum by two thirds or more of the eligible farmers participating therein, such assessment shall be levied annually for the six years set forth in the call for such referendum and a new referendum may be called and conducted during the sixth year of such period on the question of whether or not such assessment shall be continued for the next ensuing six years. (1951, c. 827, s. 10; 1967, c. 631, s. 2.)

**Editor's Note.** — The 1967 amendment substituted "six years" for "three years" at the end of the first sentence and in two places in the second sentence and substituted "sixth year" for "third year" in the second sentence.

## ARTICLE 50C.

### *Promotion of Sale and Use of Tobacco.*

**§ 106-568.18. Policy as to joint action of farmers.**—It is hereby declared to be in the public interest that the farmers of North Carolina who produce flue-cured tobacco be permitted and encouraged to act jointly in promoting and stimulating, by organized methods and through the medium established for such purpose, export trade for flue-cured tobacco and the use of tobacco everywhere. (1959, c. 309, s. 1.)

**§ 106-568.19. Policy as to referendum on question of annual assessment.**—For the purpose of raising reasonable and necessary funds for producer participation in the operations of the agency set up under farmer sponsorship for the promotion of export trade in flue-cured tobacco and the use of tobacco

everywhere, it is proper, desirable, necessary and in the public interest that the farmers in this State engaged in the production of flue-cured tobacco shall have the opportunity and privilege of participating in a referendum to be held as hereinafter provided, in which referendum there shall be determined the question of whether or not the farmers of the State engaged in the production of flue-cured tobacco shall levy upon themselves an annual assessment for the purposes herein stated. (1959, c. 309, s. 2.)

**§ 106-568.20. Referendum in 1961 on assessment for next three years.**—During the year 1961 and upon the exact date in such year as may be determined in the manner hereinafter set forth and under rules and regulations as established under the provisions of this article, there shall be held in every county in North Carolina in which flue-cured tobacco is produced a referendum to be participated in by all farmers engaged in the production of flue-cured tobacco, including owners of farms on which such tobacco is produced, tenants and sharecroppers, in which referendum said individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years (1962, 1963 and 1964), such amount as may have been theretofore or as may be thereafter determined by the board of directors of Tobacco Associates, Incorporated, but not more than one dollar (\$1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina. (1959, c. 309, s. 3.)

**§ 106-568.21. Effect of more than one-third vote against assessment in 1961 referendum.**—If in such referendum more than one third of the tobacco farmers eligible to participate therein and voting therein shall vote in the negative and against the levying or collection of such assessment, then no assessment shall be levied or collected pursuant to that referendum. (1959, c. 309, s. 4.)

**§ 106-568.22. Effect of two-thirds vote for assessment in 1961 referendum.**—If in such referendum two thirds or more of the eligible tobacco farmers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment to be determined by the board of directors of Tobacco Associates, Incorporated, but in an amount of not more than one dollar (\$1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, then such assessment shall be collected in the manner hereinafter provided. (1959, c. 309, s. 5.)

**§ 106-568.23. Regulations as to 1961 referendum; notice to farm organizations and county agents.**—The exact date in the said year 1961, on which such referendum shall be held and the hours, voting places, and rules and regulations under which such referendum shall be conducted, shall be established and determined by the board of directors of the North Carolina corporation known and designated as Tobacco Associates, Incorporated, established under the leadership of farm organizations in the State of North Carolina for the purpose of stimulating, developing and expanding export trade for flue-cured tobacco and the use of tobacco everywhere; the said referendum date, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published through the medium of the public press in the State of North Carolina by said board of directors at least thirty days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which flue-cured tobacco is grown. (1959, c. 309, s. 6.)

**§ 106-568.24. Distribution of ballots; arrangements for holding 1961 referendum; declaration of results.**—The said board of directors of Tobacco Associates, Incorporated, shall likewise prepare and distribute in ad-



vance of said referendum all necessary ballots for the purpose thereof, and shall under the rules and regulations promulgated by said board arrange for the necessary poll holders for conducting the said referendum; and following such referendum and within ten days thereafter the said board of directors shall canvass and publicly declare the results of such referendum. (1959, c. 309, s. 7.)

**§ 106-568.25. Question at 1961 referendum.**—Said referendum shall be upon the question of whether or not the farmers eligible for participation therein and voting therein shall favor an assessment for the period of three years, 1962, 1963 and 1964, in an amount in each of said years as determined by or to be determined by the board of directors of Tobacco Associates, Incorporated but not more than one dollar (\$1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, for the purpose of providing farmer participation in the fund and through the agency established for the stimulation, expansion and development of export markets for flue-cured tobacco and the encouragement of the use of flue-cured tobacco everywhere. (1959, c. 309, s. 8.)

**§ 106-568.26. Collection of assessments; custody and use of funds.**—In the event two thirds or more of the eligible farmers voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually for the years herein set forth and under such method, rules and regulations as may be determined by the board of directors of the said Tobacco Associates, Incorporated, and the said assessment so collected shall be paid into the treasurer of said Tobacco Associates, Incorporated, to be used along with funds from other sources, for the purpose of stimulating, developing and expanding export trade for flue-cured tobacco and encouraging the use of flue-cured tobacco everywhere. (1959, c. 309, s. 9.)

**§ 106-568.27. Required affirmative vote of directors of Tobacco Associates, Incorporated.**—No assesment shall be made pursuant to this article unless same shall receive the affirmative vote of not less than two thirds of the members of the board of directors of Tobacco Associates, Incorporated, including the affirmative vote of not less than two thirds of such board members who were elected by North Carolina farm organizations. (1959, c. 309, s. 10.)

**§ 106-568.28. Right of farmers dissatisfied with assessments; time for demanding refund.**—In the event any referendum authorized by this article is carried in the affirmative by such two-thirds vote and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the board of directors of Tobacco Associates, Incorporated, any farmer or tobacco producer upon whom and against whom any such annual assessment shall have been levied and collected under the provisions of this article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said Tobacco Associates, Incorporated, a refund of such annual assessment so collected from such farmer or producer of tobacco, provided such demand for refund is made in writing within thirty days from the date on which said assessment is collected from such farmer or producer or deducted from the proceeds of the sale of tobacco of such farmer or producer. (1959, c. 309, s. 11.)

**§ 106-568.29. Subsequent referendum after defeat of assessment.**—In the event any referendum conducted as provided for in this article shall not be supported by two thirds or more of those voting therein, then the board of directors of Tobacco Associates, Incorporated shall have full power and authority to call another referendum for the purposes herein set forth in any succeeding year, on the question of an annual assessment for the next three years or less. If the referendum is carried as provided in this article, then the assessments may be levied and collected as provided in this article. (1959, c. 309, s. 12.)

**§ 106-568.30. Referendum as to continuance of assessments approved at prior referendum.**—In the event any referendum, held at any time under the provisions of this article, is carried by the vote of two thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are being levied annually, then the board of directors of Tobacco Associates, Incorporated shall, in its discretion, have full power and authority to call and conduct during the last year of such period another referendum in which the farmers and producers of flue-cured tobacco shall vote upon the question of whether or not assessments under this article shall be continued for the next ensuing three years. If the referendum is carried as provided in this article, then assessments may be levied and collected as provided in this article. (1959, c. 309, s. 13.)

**§ 106-568.31. Filing and publication of financial statement by treasurer of Tobacco Associates, Incorporated.**—The treasurer of Tobacco Associates, Incorporated shall, within thirty days after the end of any fiscal year, file with the State Auditor a financial statement as of the end of the fiscal year and a detailed statement of operations for the year ended. Further a condensed statement of the financial condition and operating expenses for said fiscal year shall be published in a newspaper of general circulation, if one exists, in each county from which assessments are collected. (1959, c. 309, s. 14.)

**§ 106-568.32. Levy of assessment for 1959, 1960 and 1961 authorized.**—The board of directors of Tobacco Associates, Incorporated, by a vote (as provided in § 106-568.27 above) is hereby authorized to levy an assessment for the years 1959, 1960 and 1961 on all the flue-cured tobacco acreage in the State of North Carolina in an amount for each said year, as may be determined by said board, up to but not in excess of one dollar (\$1.00) per acre per year in accordance with and pursuant to a referendum and vote of North Carolina flue-cured tobacco growers held in December, 1958; said assessment to be levied and collected just as though said referendum had been held after the adoption of this article, provided that all of the requirements of this article as to the determination of the amount of the assessment and the collection of the assessment are complied with and provided further that all conditions of this article as to refund upon demand shall be applicable: Provided further that such assessments for the years 1959, 1960 and 1961 shall be in lieu of the amount of ten cents (10¢) per acre, authorized under the provisions of chapter 511 of the Session Laws of 1947. (1959, c. 309, s. 15.)

**§ 106-568.33. Effect of article on prior acts.**—Insofar as the provisions of this article are different from and in conflict with the provisions of chapter 511, Session Laws of 1947 and chapter 63, Session Laws of 1951, to the extent of such conflict the provisions of this article shall be applicable and shall supersede and prevail over the provisions of said former acts and all provisions of this article shall be in full effect. So long as assessments are made under this article, no assessment shall be made and collected under the provisions of chapter 511, Session Laws of 1947, as amended. (1959, c. 309, s. 16.)

## Chapter 108.

### Board of Public Welfare.

#### Article 3.

##### Division of Public Assistance.

##### Part 1. Old Age Assistance.

Sec.

108-25. [Repealed.]

##### Part 2. Aid to Dependent Children.

108-54. [Repealed.]

##### Part 3. General Assistance.

108-73.12. Appropriations not to lapse.

#### Article 4A.

##### Direct Payments for Nursing Care.

Sec.

108-79.1. Payments to nursing homes and extended care facilities.

108-79.2, 108-79.3. [Repealed.]

#### Article 5.

##### Regulation of Organizations and Individuals Soliciting Public Alms.

108-83.1. Annual financial reports.

### ARTICLE 1.

#### *State Board of Public Welfare.*

**§ 108-9. Relatives ineligible to appointment in State institutions; payments to nursing, etc., homes owned, etc., by welfare or other officials, or their relatives, prohibited.**

(b) No payment of any public welfare or public assistance funds derived from any source, federal, State, or local, shall be made for the care of any person in any nursing home or home for the aged or infirm owned or operated in whole, or in part by any of the following individuals:

- (1) A member of the State Board of Public Welfare, of any county board of public welfare, or of any board of county commissioners;
- (2) Any official or employee of the State Department of Public Welfare or of any county department of public welfare;
- (3) A spouse of any person designated in subdivisions (1) and (2) of this subsection. (1917, c. 170, s. 1; C. S., s. 5012; 1959, c. 715; 1965, c. 48; 1967, c. 983.)

#### **Editor's Note.—**

The 1967 amendment deleted former subdivisions (3) and (5) and redesignated former subdivision (4) as present subdivision (3) of subsection (b).

As subsection (a) was not affected by the amendment, it is not set out.

### ARTICLE 2.

#### *County Boards of Public Welfare.*

**§ 108-12. Meetings of the board; compensation and expenses.**

**Local Modification.** — Anson: 1967, c. 271.

### ARTICLE 3.

#### *Division of Public Assistance.*

##### Part 1. Old Age Assistance.

**§ 108-25:** Repealed by Session Laws 1967, c. 554, effective July 1, 1967.

**Cross Reference.**—For present provisions to the effect that county appropriations for public assistance programs shall not lapse or revert, and as to transfer of funds from one public assistance program to another, see § 108-73.12.



**§ 108-38. Administration expenses.**—The State Board of Allotments and Appeal shall annually allocate to the several counties of the State, in accordance with the total amount of benefit payments to be paid in each county for old age assistance therein, the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of the public welfare program by the several counties, shall be determined by the State Board of Allotments and Appeal upon budgets submitted to said Board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, an amount not to exceed one half of such costs shall be allocated and paid to the respective counties by the State Board of Allotments and Appeal from the appropriation made by the State for aid to county welfare administration. The balance of said county administrative expenses shall be paid by the respective counties. The State Board of Allotments and Appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payment of such part of such county's administrative expenses.

The county board of commissioners shall, consistent with the provisions of the federal Social Security Act, the State Personnel Act, and the County Fiscal Control Act, determine the number and salary of county welfare employees, having been advised by the county director of welfare and the State Board of Public Welfare. (1937, c. 288, s. 23; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1957, c. 100, s. 1; 1961, c. 186; 1963, c. 248, s. 1; 1967, c. 898.)

**Editor's Note.**—

The 1967 amendment, effective July 1, 1967, rewrote the last paragraph.

## Part 2. Aid to Dependent Children.

**§ 108-49. Dependent children defined.**—The term "dependent child" as used in this article shall mean a child under twenty-one years of age who is living with his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, adoptive father, adoptive mother, grandfather-in-law, great-grandfather, grandmother-in-law, great-grandmother, brother of the half blood, brother-in-law, adoptive brother, sister of the half blood, sister-in-law, adoptive sister, uncle-in-law, aunt-in-law, great-uncle, and great-aunt, in a place of residence maintained by one or more of such relatives as his or their own home or who is living in a foster home licensed by the State Board of Public Welfare; who has resided in the State of North Carolina for one year immediately preceding the application for aid; or who was born within one year immediately preceding the application if the mother has resided in the State for one year immediately preceding the birth or application, and who has been deprived of parental support or care by reason of the death, physical or mental incapacity or continued absence from the home of a parent, and who has no adequate means of support. (1937, c. 288, s. 35; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1961, c. 533; 1965, c. 939, s. 1; 1967, c. 660.)

**Editor's Note.**—

The 1967 amendment, effective July 1, 1967, deleted "within the State" following

the word "born" and inserted "or application" in the part of the section that follows the last semicolon.

**§ 108-54:** Repealed by Session Laws 1967, c. 554, effective July 1, 1967.

**Cross Reference.**—For present provisions to the effect that county appropriations for public assistance programs shall not lapse

or revert, and as to transfer of funds from one public assistance program to another, see § 108-73.12.

## Part 3. General Assistance.

**§ 108-73.12. Appropriations not to lapse.** — County appropriations for public assistance programs shall not lapse or revert, and the unexpended balances may be considered in making further public assistance appropriations. Provided, that, if at any time during any fiscal year it appears to be necessary and feasible, counties, with the approval of the State Board of Allotments and Appeal, may transfer funds from one county public assistance program to another. (1953, c. 891; 1967, c. 554.)

**Editor's Note.** — The 1967 amendment, effective July 1, 1967, rewrote this section.

**§ 108-73.12d. Fraudulent acts made misdemeanor; aid to the permanently and totally disabled.**

**Evidence Sufficient to Support Conviction for Conspiracy to Defraud Department.**—Evidence that a welfare recipient was advised that it was his responsibility to inform the department of any change of address, that while he was living with relatives he was imprisoned, that during imprisonment he advised one of his relatives to continue cashing his welfare checks and to spend some of the money for designated purposes and save the rest for the recipient,

that upon the visit of a welfare agent to the recipient's home the wife of the recipient's cousin advised the agent that the recipient was on a visit, and that pursuant to the recipient's instructions, recipient's cousin cashed the checks, was sufficient to support a conviction for conspiracy to defraud the welfare department in violation of this section. *State v. Butler*, 269 N.C. 733, 153 S.E.2d 477 (1967).

## ARTICLE 4A.

*Direct Payments for Nursing Care.*

**§ 108-79.1. Payments to nursing homes and extended care facilities.**—The State Board of Public Welfare is hereby authorized and empowered to make payments to duly licensed nursing homes and extended care facilities for persons eligible to receive public assistance under the old age assistance program or aid to the permanently and totally disabled program when nursing care is deemed essential for that person by the State Board of Public Welfare. (1967, c. 1211, s. 2.)

**Revision of Article.**—Session Laws 1967, c. 1211, ss. 1 and 2, changed the title of this article from "State Boarding Fund for the Aged and Infirm" to "Direct Payments

for Nursing Care" and substituted § 108-79.1 for former §§ 108-79.1, 108-79.2 and 108-79.3. The former sections derived from Session Laws 1951, c. 90.

**§§ 108-79.2, 108-79.3:** Repealed by Session Laws 1967, c. 1211, s. 2.

**Revision of Article.**—See same catchline in note to § 108-79.1.

## ARTICLE 5.

*Regulation of Organizations and Individuals Soliciting Public Alms.*

**§ 108-83.1. Annual financial reports.** — Every licensee under G.S. 108-82, within 120 days after the end of each calendar year, or each fiscal year if such fiscal year is not on a calendar year basis, shall file with both the State Treasurer and the State Board of Public Welfare a detailed financial report showing receipts and expenditures on an itemized basis so as to disclose the various purposes for which such licensee solicited and expended funds. Such report shall include, but not by way of limitation, details as to cost of raising or securing contributions, administration of the program, organization and operation of new member groups or affiliates, amounts expended in research, amounts expended within the State, and amounts sent outside the State. Such records shall be open for public inspection.

tion at all times when the State Treasurer's office is open. No new license or renewal license shall be issued pursuant to this article to any licensee failing to comply with this section until such licensee shall have complied with the provisions of this section. (1967, c. 607.)

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## Chapter 109.

### Bonds.

#### ARTICLE 5.

##### *Actions on Bonds.*

### § 109-34. Liability and right of action on official bonds.

Cited in State ex rel. West v. Ingle, 269  
N.C. 447, 152 S.E.2d 476 (1967).

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## Chapter 110.

### Child Welfare.

#### Article 2.

##### Juvenile Courts.

###### Sec.

110-29.1. Appointment of counsel for indigent children in delinquency proceedings; compensation of counsel.

#### ARTICLE 1.

##### *Child Labor Regulations.*

§ 110-2. **Hours of labor.**—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation more than six consecutive days in any one week, or more than forty hours in any one week, or more than eight hours in any one day, nor shall any minor under sixteen years of age be so employed, permitted or allowed to work before seven o'clock in the morning or after six o'clock in the evening of any day. No minor over sixteen years of age and under eighteen years of age shall be employed, permitted or allowed to work in or about or in connection with any gainful occupation for more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than nine hours in any one day, nor shall any minor between sixteen and eighteen years of age be so employed, permitted or allowed to work before six o'clock in the morning or after twelve o'clock midnight of any day, except boys between the ages of sixteen and eighteen may be permitted to work until one o'clock in the morning as messengers where the offices of the company for which they work do not close before that hour: Provided, that boys twelve years of age and over, employed in the sale or distribution of newspapers, magazines or periodicals outside school hours shall be subject to the provisions of § 110-8 relating to employment of minors in street trades, and to such rules and regulations as may be provided under § 95-11: Provided further, that minors under eighteen years of age may be employed in a concert or a theatrical performance, under such rules and regulations as the State Commissioner of Labor may prescribe, up to twelve o'clock midnight; and provided further, that telegraph messenger boys in towns where a full-time service is not maintained on Sundays may work seven days per week, but not for more than two hours on Sunday. The combined hours of work and hours



in school of children under sixteen employed outside school hours shall not exceed a total of eight per day. (1937, c. 317, s. 2; 1951, c. 1187, s. 1; 1967, cc. 173, 764.)

**Editor's Note.**—The first 1967 amendment deleted the former first proviso, relating to nightwork by girls between 16 and 18 years of age.

The second 1967 amendment deleted the

former last proviso to the second sentence, relating to employment of girls between 17 and 18 years of age in motion picture theaters.

## ARTICLE 2.

### *Juvenile Courts.*

#### § 110-21. Exclusive original jurisdiction over children.

##### **And Exceptions Thereto.**—

One must read the cases to find that "exclusive original jurisdiction" does not mean what it says in this section. In re Custody of Sauls, 270 N.C. 180, 154 S.E.2d 327 (1967).

##### **Custody Is Determined by Judge, Not**

**Jury.**—Determining the custody of minor children is never the province of a jury; it is that of the judge of the court in which the proceeding is pending. *Stanback v. Stanback*, 270 N.C. 497, 155 S.E.2d 221 (1967).

§ 110-29.1. **Appointment of counsel for indigent children in delinquency proceedings; compensation of counsel.**—Any judge authorized to conduct hearings in juvenile court matters, shall, prior to conducting a hearing pursuant to G.S. 110-29, in which a finding of delinquency and commitment to an institution is possible, inform the child and his parent or parents that the child is entitled to representation by counsel, and that if they are financially unable to retain counsel, the court will appoint counsel to represent the child. Determination of indigency shall be made under the standards established in G.S. 15-5.1 for indigency in adult cases. The fee for appointed counsel shall be fixed by the judge who conducts the hearing, and shall be paid under the same procedures and from the same fund as fees for counsel appointed in adult indigent cases. To assure a reasonable degree of uniformity in fees for appointed counsel in juvenile cases, the Administrative Officer of the Courts is authorized to promulgate, subject to the approval of the Supreme Court, rules for the guidance of juvenile court judges in fixing fees under this section. (1967, c. 870, s. 1.)

**Editor's Note.**—Section 3, c. 870, Session Laws 1967, provides that the act shall become effective July 1, 1967.

§ 110-30. **Child to be kept apart from adult criminals; detention homes.**—(a) No child coming within the provisions of this article shall be placed in any penal institution, jail, lockup, or other place where such child can come in contact at any time or in any manner with any adult convicted of crime and committed or under arrest and charged with crime, except as provided in subsection (b) of this section. Provisions shall be made for the temporary detention of such children in a detention home to be conducted as an agency of the court for the purposes of this article, or the judge may arrange for the boarding of such children temporarily in a private home or homes in the custody of some fit person or persons subject to the supervision of the court, or the judge may arrange with any incorporated institution, society or association maintaining a suitable place of detention for children for the use thereof as a temporary detention home.

In case a detention home is established as an agency of the court it shall be furnished and carried on as far as possible as a family home in charge of a superintendent or matron who shall reside therein. The judge of the juvenile court may, with the approval of the State Board of Public Welfare, appoint a matron or superintendent or both and other necessary employees for such home in the

same manner as probation officers are appointed under this article, their salaries to be fixed and paid in the same manner as the salaries of probation officers. The necessary expense incurred in maintaining such detention home shall be a public charge.

In case the judge shall arrange for the boarding of children temporarily detained in private homes, a reasonable sum for the board of such children while temporarily detained in such homes shall be paid by the county in which such child shall reside or may be found.

In case the judge shall arrange with any incorporated institution, society or association, for the use of a detention home maintained by such institution, society or association, he shall enter an order which shall be effectual for that purpose and a reasonable sum shall be appropriated by the county commissioners for the compensation of such institution, society or association for the care of children residing or found within the county who may be detained therein.

(b) When, in the opinion of the judge, there is sufficient need for secure restraint of a child, and when, in the opinion of the judge, there are no other adequate facilities available, the judge may order the temporary detention of the child in any section of a jail which is so arranged and maintained that, while in such section, the child cannot converse with, see or be seen by, inmates placed in the jail under provisions of law other than those provided by this article. (1919, c. 97, s. 10; C. S., s. 5048; 1957, c. 100, s. 1; 1967, c. 1207.)

**Editor's Note.** — The 1967 amendment, (a), added the exception at the end of the effective July 1, 1967, designated the former first sentence of such subsection, and added provisions of this section as subsection subsection (b).

## Chapter 111.

### Commission for the Blind.

#### Article 1.

#### Organization and General Duties of Commission.

Sec.

111-12.4. Transfer of funds.

111-12.5. Reserve and operating capital fund.

Sec.

111-12.6. Disposition of funds deposited with or transferred to State Treasurer.

#### ARTICLE 1.

#### *Organization and General Duties of Commission.*

§ 111-12.4. **Transfer of funds.**—On or before September 1, 1967, any funds now held by the Bureau of Employment of the North Carolina State Commission for the Blind shall be transferred to the State Treasurer to the extent that such funds in the aggregate exceed the amount of one hundred thousand dollars (\$100,000.00). (1967, c. 1214.)

§ 111-12.5. **Reserve and operating capital fund.**—Funds now held by the Bureau of Employment of the North Carolina State Commission for the Blind, not exceeding one hundred thousand dollars (\$100,000.00) shall be retained by the Bureau of Employment of the North Carolina State Commission for the Blind or its successor organization as a reserve and operating capital fund to be expended by the Bureau of Employment of the North Carolina State Commission for the Blind or its successor for its lawful purposes and objectives, under direction and approval of the North Carolina State Commission for the Blind. (1967, c. 1214.)

**§ 111-12.6. Disposition of funds deposited with or transferred to State Treasurer.**—All funds required under this article to be deposited with or which have been heretofore transferred to the State Treasurer by the Bureau of Employment of the North Carolina State Commission for the Blind, and all future net earnings and accumulations of said bureau or its successor, other than the one hundred thousand dollar (\$100,000.00) reserve fund herein provided for, from whatever source or sources shall be periodically, but not less frequently than annually, paid over to and retained by the State Treasurer as a separate fund or account. The funds deposited with the State Treasurer shall be invested and the income from corpus shall inure to the sole benefit of the North Carolina State Commission for the Blind. The income and corpus shall be expended for services to and for the benefit of visually handicapped persons in North Carolina upon recommendation of the North Carolina State Commission for the Blind, by and with the approval of the Governor as the Director of the Budget. (1967, c. 1214.)

## Chapter 113.

### Conservation and Development.

#### SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

##### Article 1B.

##### Aviation.

Sec.

113-28.5. Legislative intent.

113-28.6. Designation of administering agency.

113-28.7. Activities eligible for State aid.

113-28.8. Limitations on State financial aid.

113-28.9. Sources of State funds.

113-28.10. Acceptance, receipt, accounting, and expenditure of State and federal funds.

#### SUBCHAPTER III. GAME LAWS.

##### Article 11.

##### Miscellaneous Provisions.

113-126.1. Killing bear out of season.

#### SUBCHAPTER IV. CONSERVATION OF FISHERIES RESOURCES.

##### Article 15.

##### Regulation of Coastal Fisheries.

113-189. Protection of sea turtles and porpoises.

##### Article 16.

##### Cultivation of Oysters and Clams.

113-202. New leases and renewal leases of oyster and clam bottoms; termination of leases issued prior to January 1, 1966.

##### Article 23A.

##### Promotion of Coastal Fisheries and Seafood Industry.

113-308. Definitions.

Sec.

113-309. Declaration of policy.

113-310. Certain activities not to be deemed illegal or in restraint of trade.

113-311. Referendum and assessment declared to be in public interest.

113-312. Application to Board for authority to conduct referendum.

113-313. Action of Board on application.

113-314. Agency to determine time and place of referendum, amount and basis of assessment, etc.; notice of referendum.

113-315. Maximum assessment.

113-315.1. Arrangements for and management of referendum; expenses.

113-315.2. Referendum may be by mail ballot or box ballot; who may vote.

113-315.3. Preparation and distribution of ballots; conduct of referendum; canvass and declaration of results.

113-315.4. Levy and collection of assessment; use of proceeds and other funds.

113-315.5. Alternative method for collection of assessment.

113-315.6. Subsequent referendum where assessment defeated.

113-315.7. Subsequent referendum where assessment adopted.

113-315.8. Refund of assessment.

113-315.9. Bond of treasurer or financial officer of agency; audit.

##### Article 24.

##### Miscellaneous Transitional Provisions.

113-322. Certain river designated as commercial fishing waters.



## SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

## ARTICLE 1B.

*Aviation.*

§ 113-28.5. **Legislative intent.**—It is the declared intention of the General Assembly to authorize, subject to the limitations and conditions of this article, the provision of State aid in the form of loans and grants to the cities, counties and public airport authorities of North Carolina for the purposes of planning, acquiring, constructing, or improving municipal, county or public authority airport facilities; and to authorize related programs of education, promotion and long-range planning for such facilities. (1967, c. 1006, s. 1.)

**Editor's Note.** — Session Laws 1967, c. 1006, s. 2, provides: "There is hereby appropriated out of the general fund, to the Department of Conservation and Development, in addition to all other sums appropriated to said Department, for the pur-

pose of carrying out the provisions of this act, the sum of two hundred and fifty thousand dollars (\$250,000.00) for the fiscal year beginning on July 1, 1967 and ending June 30, 1968."

§ 113-28.6. **Designation of administering agency.**—The Department of Conservation and Development, Commerce and Industry Division, is hereby designated as the State agency to carry out the purposes of this article subject to the general supervisory powers of the Director and the Board of Conservation and Development of the Department. In exercising such powers the Department shall:

- (1) Prepare and develop standards, criteria, and policies for the most efficient and economical expenditure of such State funds as may be appropriated for purposes of this article; including consultation with the State Highway Commission, concerning road and runway construction.
- (2) Publish and make available to aviation interests, the Federal Aviation Agency, and the people of the State generally current information regarding such criteria, standards, and policies.
- (3) Prepare and keep current a State airport plan and submit annual revisions of that plan to the Federal Aviation Agency.
- (4) Make detailed and thorough study of all applications for State assistance authorized herein and make specific recommendations regarding each such application to the Board of Conservation and Development and to the Federal Aviation Agency.
- (5) Recommend annually, or more often if the Department deems necessary, a plan of priorities and allocations of State funds to the Board of Conservation and Development.
- (6) Represent the State before all federal agencies and elsewhere where the aviation interests of the State may be affected.
- (7) Subject to the availability of funds for the purpose, conduct such promotional, educational and other programs as may be necessary to keep the people of the State properly informed with respect to aviation, and to further aeronautics generally throughout the State.
- (8) In exercising the foregoing powers, the Department of Conservation and Development shall consult with and seek the advice of the committee known as "The Governor's Aviation Committee." Such committee shall consist of 11 members appointed by the Governor, who in making such appointments, shall designate one person from each of the congressional districts of the State. The Governor shall designate the chairman. Six members shall be appointed to serve for terms of four years each, and five members shall be appointed to serve for

terms of two years each. Thereafter, upon the expiration of their respective terms, the successors of said members shall be appointed for terms of four years each. At least four of these members, so appointed, shall possess a broad knowledge of aviation and airport development. All members appointed to the committee shall serve for the duration of their respective terms and until their successors are appointed and qualified. Any vacancy occurring in the membership of said committee because of death, resignation, or otherwise shall be filled by the Governor for the unexpired term of such member. Members of the committee shall meet twice each year and shall receive as compensation for their services seven dollars (\$7.00) for each day actually engaged in the exercise of the duties of the committee and such travel expenses and subsistence allowances as are generally allowed other State Commissions and Boards. (1967, c. 1006, s. 1.)

§ 113-28.7. **Activities eligible for State aid.** — Loans and grants of State funds may be made for the planning, acquisition, construction, or improvement of any airport owned or controlled, or which will be owned and controlled by any city, county or public airport authority acting by itself or jointly with any other city or county. An airport development project or activity eligible for State aid under this article shall also be deemed to include projects, such as air navigation facilities, aviation easements, and the acquisition of land, lighting, marking, or elimination of airport hazards. (1967, c. 1006, s. 1.)

§ 113-28.8. **Limitations on State financial aid.**—Grants and loans of funds authorized by this article shall be subject to the following conditions and limitations;

- (1) Loans and grants may be made for such projects, activities, or facilities as would be in general eligible for approval by the Federal Aviation Agency or its successor agency or agencies in administering the federal aid airport program and/or the national airport plan pursuant to the Federal Airport Act, Public Law 377, 79th Congress, approved May 13, 1946, as amended.
- (2) Loans and grants shall be limited to municipal, county and public authority airports which are, or which would be if constructed according to plans approved by the Federal Aviation Agency, a general purpose noncarrier airport as defined by the Federal Aviation Agency.
- (3) Loans and grants of State funds shall be limited to a maximum of twenty-five percent (25%) of the total cost of any project for which aid is requested, and shall be made only for the purpose of supplementing such other funds, public or private, as may be available from federal or local sources.
- (4) All loans and grants of State funds made or authorized pursuant to this article shall be subject to the prior approval of the Board of Conservation and Development. (1967, c. 1006, s. 1.)

§ 113-28.9. **Sources of State funds.**—State financial assistance under this article shall be limited to appropriations of funds made for the purpose by the General Assembly to the Department of Conservation and Development, or to private funds which may become available to the Department for such purpose. (1967, c. 1006, s. 1.)

§ 113-28.10. **Acceptance, receipt, accounting, and expenditure of State and federal funds.**—All North Carolina municipalities, counties and public airport authorities are hereby authorized to accept, receive, receipt for, disburse and expend State funds, and other funds, public and private, which may be made available to them to accomplish any purpose of this article. All federal funds ac-

cepted and expended by any municipality or county shall be accepted, accounted for, and expended according to such terms and conditions as may be prescribed by the United States and not inconsistent with State law. All State funds accepted by any municipality, county or public airport authority shall be accepted, accounted for, and expended according to such terms and conditions as may be prescribed by the State Department of Conservation and Development. Unless otherwise prescribed by the federal or State agency from which funds were made available, the chief financial officer of the municipality, county or public airport authority shall deposit all funds received and keep the same in separate funds according to the purpose for which they were received. The accounting of all such funds shall be subject to the municipal and county Fiscal Control Acts. (1967, c. 1006, s. 1.)

**Cross Reference.**—See Editor's note to § 113-28.5.

### SUBCHAPTER III. GAME LAWS.

#### ARTICLE 7.

##### *North Carolina Game Law of 1935.*

#### § 113-91. Powers of Commissioner.

- (1) To Issue Permits. — The Commissioner may issue a permit, revocable for cause, to any person, authorizing the holder to collect and possess wild animals or wild birds or birds' nests or eggs for scientific, propagation, or exhibition purposes, but no wild animals or wild birds shall be held in captivity under inhumane or unsanitary conditions. Before such a permit to take for scientific purposes is issued, the applicant must file written testimonials from two well known ornithologists or zoologists and pay the sum of two dollars (\$2.00) for the permit, but duly accredited representatives of public educational or scientific institutions, or governmental departments of the United States engaged in the scientific study of birds and animals, may be granted such a permit without endorsements or charge or without being required to obtain a hunting license. If the Commissioner is satisfied of the good faith of the applicant, he shall issue to him a permit, which shall fix the date of its expiration, and may fix a restriction upon the number and kinds of animals, birds, or birds' nests or eggs to be taken thereunder, but no such permit shall be valid after the last day of the calendar year in which it is issued. Permits to take game animals or game birds during the closed season shall not be issued except to a duly accredited representative of a school, college, university, public museum or other institution of learning, or a representative of the federal government engaged in the scientific study of birds and animals or to a duly accredited representative of a State game department or Commission to restock the covers of the State which he represents. Specimens of birds or animals legally taken and birds and animals reared in domestication pursuant to the provisions of this article and to the regulations of the Board may be bought, sold, and transported at any time by any person holding a valid permit issued in accordance with the provisions of this section. When transported by common carrier or contained in a package, said specimens or any package in which the same are transported shall have clearly and conspicuously marked on the outside the name and address of the consignor and consignee, and an accurate statement of the numbers and kinds of birds and animals, specimens or parts thereof, or birds' nests or eggs contained therein,



and that such specimens are for scientific or propagation purposes. Each person receiving a permit under this section must file, at the expiration of his permit, with the Commissioner a report of his operations under the permit, which report shall set forth the name and address of the permittee, the number of his permit, the number of each species of birds, animals or birds' nests or eggs taken thereunder or otherwise acquired, disposition of the same, names and addresses of persons acquiring the same from the permittee, and number of each species on hand for propagation purposes at the expiration of the permit. The Board is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds and animals raised in domestication pursuant to the provisions of this article.

(1967, c. 1119.)

**Editor's Note.—**

The 1967 amendment, effective Jan. 1, 1968, added the language following "exhibition purposes" in the first sentence of subdivision (1).

As the rest of the section was not affected by the amendment, it is not set out.

**§ 113-95. Licenses required.**

**Amendment Effective Aug. 1, 1968.—** Session Laws 1967, c. 790, effective Aug. 1, 1968, will increase the nonresident license and permit fees by two dollars each and insert a paragraph immediately following

the fee schedule relating to the use of portions of the nonresident license and permit fees for the propagation, management and control of migratory waterfowl in North Carolina and Canada.

**§ 113-102. Protected and unprotected game.**

(b) Unprotected Birds: English sparrows, crows, jays, blackbirds, starlings and buzzards and their nests and eggs.

(1967, c. 728, s. 1.)

**Editor's Note.—**

The 1967 amendment deleted from subsection (b) "great horned owls, Cooper's hawks, sharp-shinned hawks."

Section 2, Session Laws 1967, c. 728, provides: "This act shall not be construed

to prevent the killing of owls or hawks when they are committing depredations, as authorized by G.S. 113-97."

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

**§ 113-104. Manner of taking game.**—No person shall at any time of the year take in any manner, number, or quantity any wild bird or wild animal, or take the nests or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner any such bird, animal, or part thereof, or any birds' nests or eggs, except as permitted by this article; the possession of any game animals, or game birds or part of such animals or game birds, except those expressly permitted by the Board, in any hotel, restaurant, cafe, market or store, or by any produce dealer in this State shall be prima facie evidence of the possession thereof for the purpose of sale in violation of the provisions of this article; but this provision shall not be construed to prohibit the person lawfully obtaining game from having it prepared in a public eating place and served to himself and guest: Provided, however, that for the purpose of this article any person hiring another to kill aforesaid game animals or game birds and receiving same shall be deemed buying same, and subject to the penalties of this article. Game birds and game animals shall be taken only in the daytime, gauge, a rifle, or with bow having minimum pull of forty-five (45) pounds and nonpoisonous, nonbarbed, nonexplosive arrow with minimum broadhead width of seven-eighths of an inch, unless otherwise specifically permitted by this article: Provided, however, blunt type arrowheads may be used in taking game birds and

small game animals including, but not by way of limitation, rabbits, squirrels, quail, grouse, turkeys and pheasants; provided that pistols with barrels not less than six inches in length and a muzzle velocity of not under 1100 feet per second and bullet weight of not less than 35 grains or more than 70 grains may be used in the hunting or taking of squirrels or rabbits on one's own land or on land in one's legal possession, or on lands of another where expressed permission has been granted therefor. No person shall take any game animals or game birds or migratory game birds from any automobile, or from any engine powered or self-propelled vehicle or any vehicle especially equipped to provide facilities for taking deer by any unlawful means, or by aid of or with the use of any jacklight, or other artificial light, net, trap, snare, fire, salt lick or poison; nor shall any such jacklight, net, trap, snare, fire, salt lick or poison be used or set to take any animals or birds; nor shall birds or animals be taken at any time from an airplane, power boat, sailboat, or any boat under sail, or any floating device towed by a power boat or sailboat or, during the hours between sunset and sunrise, from any other floating device; nor shall any person take any dove, wild turkey, or upland game bird on any field, or in any cover in which corn, wheat, or other grain has been deposited for the purpose of drawing such birds thereto. However, it shall be lawful to use an artificial light and firearms except where prohibited by the North Carolina Wildlife Resources Commission regulations when hunting raccoons or opossums with dogs, or when hunting frogs. A person may take game birds and wild animals during the open season therefor with the aid of dogs, unless specifically prohibited by this article. It shall be lawful for individuals and organized field trial clubs or associations for the protection of game, to run trials or train dogs at any time: Provided, that no shotgun be used and that no game birds or game animals shall be taken during the closed season by reason thereof. The Board shall have, and is hereby given, full power and authority to make regulations defining the manner of taking fur-bearing animals and to prohibit the use of steel traps in any county or districts of the State when it shall appear necessary and advisable to the said Board. Any person who shall cut down den trees in taking game or fur-bearing animals shall be guilty of a misdemeanor.

It shall be unlawful for any person or persons to hunt with guns or dogs upon the lands of another without first having obtained permission from the owner or owners of such lands, and said permission so obtained may be continuous for one open hunting season only.

It shall be unlawful for any person to hunt, take or kill any upland game birds, squirrels or rabbits with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than three shells, the magazine of which has not been cut off or plugged with a one-piece metal or wooden filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than three shells at one time in the magazine and chamber combined. It shall be unlawful for any person while hunting wild birds and animals with a gun to refuse to surrender such gun for inspection upon request of a duly authorized officer. It shall also be unlawful to shoot any such birds while such birds are sitting on the ground.

It shall be unlawful for any person to possess, sell, or offer for sale any noose-type commercially-manufactured snare by which an animal may be entangled and caught.

It shall be unlawful for any person to take or kill or attempt to take or kill any deer from or through the use of any boat or other floating device; provided that this section shall not prohibit the transportation of hunters or their legally taken game by means of any boat or other floating device, and shall not prohibit the hunter shooting from his stand, if such stand is not within or a part of such boat or floating device. This paragraph shall not apply to the counties of Beaufort, Bertie, Burke, Camden, Carteret, Cherokee, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Gates, Hertford, Hoke, Lenoir, Martin,

Northampton, Pamlico, Pasquotank, Perquimans, Person, Robeson, Sampson, Surry, Swain, Tyrrell, Washington, Wayne and Yadkin. (C. S., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3; 1955, c. 104; 1959, cc. 207, 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½; 1967, c. 858, s. 1; c. 1149, s. 1.5.)

**Editor's Note.—**

The first 1967 amendment inserted in the first paragraph the proviso as to use of pistols for taking squirrels or rabbits. Section 2 of the 1967 amendatory act provides that the act shall apply to the following counties only: Alexander, Buncombe, Caldwell, Cherokee, Clay, Cleveland, Graham, Haywood, Macon, Madison, Mitchell, Polk, Rutherford, Transylvania and Yancey.

The second 1967 amendment inserted "and firearms except where prohibited by the North Carolina Wildlife Resources Commission regulations" in the fourth sentence.

**Applied in** *State v. Vaughan*, 268 N.C. 105, 150 S.E.2d 31 (1966).

**§ 113-109. Punishment for violation of article.**

(b) Any person who takes or attempts to take deer between sunset and sunrise with the aid of a spotlight or other artificial light on any highway or in any field, woodland, or forest, in violation of this article shall, upon conviction, be fined not less than two hundred fifty dollars (\$250.00) or imprisoned for not less than ninety days. In any locality or area which is frequented or inhabited by wild deer, the flashing or display of any artificial light from roadway or public or private driveway so that the beam thereof is visible for a distance of as much as fifty feet from such roadway or driveway, or the flashing or display of such artificial light at any place off such roadway or driveway, when either of such acts is accompanied by the possession of a firearm or a bow and arrow during the hours between sunset and sunrise, shall constitute prima facie evidence of a violation punishable under the provisions of the preceding sentence.

(d) Any person who shall take or attempt to take wild turkey during the closed season thereon as established by the Wildlife Resources Commission, or any person who shall take or attempt to take wild turkey during the open season as established by the Wildlife Resources Commission by the use of any unlawful means or method as defined in G.S. 113-104, shall, upon conviction, be fined not less than two hundred and fifty dollars (\$250.00) or imprisoned for not less than ninety (90) days, or both in the discretion of the court.

(1967, c. 729; c. 1149, s. 1.)

**Editor's Note.—**

The first 1967 amendment increased the minimum fine in subsection (d) from \$100.00 to \$250.00.

The second 1967 amendment rewrote the second sentence in subsection (b).

As the rest of the section was not changed by the amendments, only subsections (b) and (d) are set out.

**Applied in** *State v. Vaughan*, 268 N.C. 105, 150 S.E.2d 31 (1966).

ARTICLE 8.

*Fox Hunting Regulations.*

**§ 113-111. No closed season in certain counties.**—It shall be lawful to hunt, take or kill foxes at any time by any lawful method in Alexander, Alleghany, Anson, Ashe, Avery, Cabarrus, Catawba, Davidson, Davie, Forsyth, Greene, Harnett, Haywood, Henderson, Iredell, Lenoir, Nash, Perquimans, Pitt, Rockingham, Rowan, Stokes, Tyrrell, Union, Watauga, and Yadkin counties, and in Bensalem, Sheffields, Ritters, Deep River, and Carthage townships in Moore County. (1931, c. 143, s. 5; 1933, c. 428; 1939, c. 319; 1943, c. 615; 1947, cc. 333, 802; 1949, c. 263; 1953, cc. 196, 197, 199, 200, 960, 989; 1955, cc. 184, 286, 508, 685, 1037, 1039, 1119, 1123; 1957, c. 742, s. 1; 1959, cc. 535, 536, 570; 1963, c. 830; 1965, c. 522; 1967, cc. 642, 922.)



**Local Modification.**—By virtue of Session Laws 1967, c. 642, Warren should be stricken from the replacement volume.

**Editor's Note.**—

Session Laws 1967, c. 642, repealed Session Laws 1957, c. 742, which inserted Franklin in the list of counties in this sec-

tion. The 1967 act provides that it is the intent and purpose of the act that the general laws of the State relating to fox hunting shall be applicable to Franklin County.

Session Laws 1967, c. 922, deleted "Martin" from the list of counties.

#### ARTICLE 10A.

##### *Trespassing upon "Posted" Property to Hunt, Fish or Trap.*

§ 113-120.1. Trespass for purposes of hunting, etc., without written consent a misdemeanor.

**Local Modification.** — Avery, Mitchell and Watauga: 1967, c. 644.

#### ARTICLE 11.

##### *Miscellaneous Provisions.*

§ 113-126.1. **Killing bear out of season.**—Notwithstanding any other provisions of law, it shall be unlawful to take, trap, kill, or attempt to take, trap or kill bears in North Carolina except during the open seasons therefor as established by regulations of the Wildlife Resources Commission; provided, that when bears are found in the act of destroying, or attempting to destroy, real or personal property, such property owners may take such action as appears reasonable and necessary, including killing the bear, to protect their real or personal property. When a bear is killed out of season by a property owner while such bear is destroying or attempting to destroy real or personal property, a Wildlife Resources Commission representative shall be notified within 12 hours of said killing by the person killing the bear and the carcass of such bear shall be disposed of by gift to some recognized charitable institution located in the county where the bear was killed; provided further, that when there is evidence of depredation to crops or other real or personal property by bears, the Wildlife Resources Commission, in its discretion, may issue a permit authorizing the owner to take necessary and reasonable steps to prevent further depredations.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars (\$100.00) or imprisoned for not more than 60 days, or both fined and imprisoned, in the discretion of the court. (1967, c. 953.)

### SUBCHAPTER IV. CONSERVATION OF FISHERIES RESOURCES.

#### ARTICLE 14.

##### *Commercial and Sports Fisheries Licenses and Taxes.*

§ 113-152. **Licensing of vessels; fees.**—(a) The following vessels are subject to the licensing requirements of this section:

- (1) All vessels engaged in commercial fishing operations in coastal fishing waters and
- (2) All North Carolina vessels engaged in commercial fishing operations without the State which result in landing and selling fish in North Carolina. North Carolina vessels are those which have their primary situs in North Carolina. Motorboats with North Carolina numbers under the provisions of chapter 75A of the General Statutes are deemed to have their primary situs in North Carolina; documented vessels which list a North Carolina port as home port are deemed to have their primary situs in North Carolina.

"Commercial fishing operations" are all operations preparatory to, during, and subsequent to the taking of fish:

- (1) With the use of commercial fishing equipment or
- (2) By any means, if a primary purpose of the taking is to sell the fish.

It is unlawful for the owner of a vessel subject to licensing requirements to permit it to engage in commercial fishing operations without having first procured the appropriate license. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations without complying with the provisions of this section and of regulations made under the authority of this article. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations that does not meet the license requirements of this article or of regulations made under the authority of the article, or without making reasonably certain that all persons on board are in compliance with the provisions of this article and regulations made under the authority of this article. It is unlawful to participate in any commercial fishing operation in connection with which there is a vessel subject to licensing requirements not meeting the licensing requirements under the provisions of this article or of regulations made under the authority of this article.

Nothing contained in this section shall require the licensing of any vessel used solely for clamming or oystering by a person not required to have a clam and oyster license under the provisions of G.S. 113-154. Spears or gigs shall not be deemed commercial fishing equipment unless used in an operation the purpose of which is the taking of fish for commercial purposes.

(f) No persons exempt from the oyster and clam licenses under the provisions of this section may take more than one bushel of oysters and clams in the aggregate on any one day. (1953, c. 1134; 1955, c. 888, ss. 1, 3; 1961, c. 1004; 1965, c. 957, s. 2; 1967, c. 444, ss. 1, 2.)

**Editor's Note.** — The 1967 amendment added the last paragraph of subsection (a) and added subsection (f). As the rest of the section was not changed by the amendment, only subsections (a) and (f) are set out.

### § 113-154. Oyster and clam licenses.

(b) It is unlawful for any individual to take oysters or clams for commercial use from the public or private grounds of North Carolina without having ready at hand for inspection a current and valid oyster and clam license issued to him personally and bearing his correct name and address. It is unlawful for any such individual taking or possessing freshly taken oysters or clams to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(1967, c. 444, s. 3.)

**Editor's Note.**—The 1967 amendment inserted "for commercial use" near the beginning of subsection (b). As the rest of the section was not changed by the amendment, only subsection (b) is set out.

## ARTICLE 15.

### *Regulation of Coastal Fisheries.*

§ 113-189. **Protection of sea turtles and porpoises.** — (a) It shall be unlawful willfully to take, disturb or destroy any sea turtles including, but not limited to, green, hawksbill, loggerhead, and leatherback turtles, or their nests or eggs at any time during the months of May, June, July, August and September of each year.

(b) It shall be unlawful willfully to harm or destroy porpoises. (1967, cc. 198, 1225.)

**Editor's Note.** — Chapter 1225, Session Laws 1967, designated the former provisions of the section as subsection (a) and added subsection (b).

## ARTICLE 16.

*Cultivation of Oysters and Clams.*

§ 113-202. **New leases and renewal leases of oyster and clam bottoms; termination of leases issued prior to January 1, 1966.**—(a) In order to encourage oyster and clam culture in North Carolina, the Board, upon the recommendation of the Commissioner, may lease to residents any of the public bottoms underlying coastal fishing waters which do not contain a natural oyster or clam bed, in accordance with the provisions of this article. A natural oyster or clam bed is an area of public bottom where oysters or clams are to be found growing in sufficient quantities to be valuable to the public.

(b) The area leased may not be less than one acre nor more than 50 acres, except that in the open waters of Pamlico Sound leases may not be less than five acres nor more than 200 acres. For the purposes of this section, the open waters of Pamlico Sound are those waters more than two miles from the shore line.

(c) No person may lease more than a total of 50 acres of public bottom outside the open waters of Pamlico Sound. In no event may any person lease more than a total of 200 acres within the State.

(d) Any person desiring to apply for a lease must make written application to the Commissioner on forms prepared by him containing such information as deemed necessary to determine the desirability of granting or not granting the lease requested. Except in the case of renewal leases, the application must be accompanied by a survey, made at the expense of the applicant, showing the area proposed to be leased.

The survey must conform to standards prescribed by the Commissioner concerning accuracy of survey and the amount of detail that must be shown. If on the basis of the application information and survey the Commissioner deems that granting the lease would benefit the oyster and clam culture of North Carolina, the Commissioner, in the case of initial lease applications, must order an investigation of the bottom proposed to be leased. The investigation is to be made by the Commissioner or his authorized agent and by a qualified assistant appointed by the board of county commissioners of the county in which the bottom, or the greater portion of the bottom, is located to determine whether there is a natural oyster or clam bed within the bounds of the proposed lease. In the event a natural oyster or clam bed is encountered, the Commissioner in his discretion may either recommend that the lease be denied or that it be amended so as to exclude such bed. In the event the Commissioner authorizes amendment of the application, the applicant must furnish a new survey meeting requisite standards showing the area proposed to be leased under the amended application. At the time of making application for an initial lease, the applicant must pay a filing fee of twenty-five dollars (\$25.00).

(e) The area of bottom applied for in the case of an initial lease or amended initial lease must be as compact as possible, taking into consideration the shape of the body of water, the consistency of the bottom, and the desirability of separating the boundaries of a leasehold by a sufficient distance from any known natural oyster or clam bed to prevent the likelihood of disputes arising between the leaseholder and members of the public taking oysters or clams from the natural bed.

(f) Upon determination by the Commissioner that the results of the investigation, if required, are satisfactory and that the application for lease and the accompanying survey are in order, and that the proper filing fee has been tendered, the Commissioner must within a reasonable time notify the applicant whether he recommends approval, disapproval, or modification of the lease application. In the event the Commissioner recommends approval or a modification to which the applicant agrees, the Commissioner must publish at least two notices of intention to lease in a newspaper of general circulation in the county or counties in which the proposed leasehold lies. The first publication must precede by more than 30 days the meeting of the Board at which the granting of the lease or renewal of lease



is to be made; the second publication must follow the first by seven to 11 days. The notice of intention to lease must contain a sufficient description of the area of the proposed leasehold that its boundaries may be established with reasonable ease and certainty and must also contain the date of the meeting at which the Board is slated to act upon the application for lease or renewal of lease.

(g) Protests to the granting of the proposed lease may be filed with the Commissioner in writing under oath prior to the granting of the lease by the Board. Protests cannot be considered unless accompanied by a filing fee of twenty-five dollars (\$25.00). The Commissioner must evaluate the sufficiency of the grounds stated in the protest and make such investigation as he deems necessary. In the interest of making a just evaluation, he may recommend that the Board postpone consideration of the lease to a subsequent meeting. The Commissioner as a result of his evaluation may recommend denial or amendment of the lease or the granting of it in its original form, in the best interests of the oyster and clam culture of North Carolina, except that no lease may be granted which embraces a known or suspected natural oyster or clam bed. The lease applicant must furnish any additional or amended survey required in the event the protest results in a modification of the lease. In the event the protest does not prevail and the lease is granted in its original form, the twenty-five dollars (\$25.00) deposited with the protest must be forfeited to the use of the Department. In the event the protest is successful in causing a denial or modification of the lease, the twenty-five dollars (\$25.00) deposit must be returned to the person protesting.

(h) The Board in its discretion may lease or decline to lease public bottoms for oyster or clam culture in accordance with its duty to conserve the marine and estuarine resources of the State. The Commissioner must present all lease applications to the Board as to which he has published a notice of intention to lease more than 30 days prior to the meeting of the Board. In the event there was a protest that did not prevail before the Commissioner as to any lease recommended by him, the Commissioner must notify the Board of such protest. Persons whose lease applications are not recommended or are recommended in amended form by the Commissioner may appeal to the Board. In the event the Board sustains the appeal in whole or in part, it may order the Commissioner to take the steps necessary to comply with its decisions and effect a reprocessing of the lease application prior to the next Board meeting or such other time as it may direct.

(i) After a lease is granted by the Board and the Director is satisfied that the survey submitted meets the criteria and that all fees and rent due in advance have been paid, the Director must execute the lease on forms approved by the Attorney General. The leaseholder must erect markers complying with regulations of the Board in order to define the bounds of the leased area. The Commissioner shall have authority, in his discretion, with the approval of the lessee, to amend an existing lease by reducing the area under lease or by combining existing contiguous leases.

(j) Initial leases begin upon the issuance of the lease by the Director and expire at noon on the first day of April following the tenth anniversary of the granting of the lease. Renewal leases are issued for a period of 10 years effective from the time of expiration of the previous lease. The rental for initial leases is one dollar (\$1.00) per acre for all leases entered into before July 1, 1965, and for all other leases until noon on the first day of April following the first anniversary of the lease. Thereafter, for initial leases entered into after July 1, 1965, and from the beginning for renewals of leases entered into after said date, the rental is five dollars (\$5.00) per acre per year. Rental must be paid annually in advance prior to the first day of April each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first day of April must be paid in advance at the rate of one dollar (\$1.00) per acre per year; then, on or before the first day of April next, the lessee must pay the rental for the next full year.

(k) Except as restricted by this subchapter, leaseholds granted under this

section are to be treated as if they were real property and are subject to all laws relating to taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal process, and the like. Leases properly acknowledged and probated are eligible for recordation in the same manner as instruments conveying an estate in real property. Within 15 days after transfer of beneficial ownership of all or any portion of or interest in a leasehold to another, the new owner must notify the Commissioner of such fact. Such transfer is not valid until notice is furnished the Commissioner. In the event such transferee is a nonresident, the Commissioner must initiate proceedings to terminate the lease.

(1) Upon receipt of notice by the Commissioner of any of the following occurrences, he must commence action to terminate the leasehold:

- (1) Failure to pay the annual rent in advance.
- (2) Failure to file information required by the Commissioner upon annual remittance of rental.
- (3) Failure by new owner to report a transfer of beneficial ownership of all or any portion of or interest in the leasehold.
- (4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the regulations of the Board.
- (5) Failure to utilize the leasehold on a continuing basis for the commercial production of oysters or clams.
- (6) Transfer of all or part of the beneficial ownership of a leasehold to a nonresident.
- (7) Substantial breach of compliance with the provisions of this article or of regulations of the Board governing use of the leasehold.

The Board is authorized to make regulations defining commercial production of oysters and clams, based upon the productive potential of particular areas, climatic or biological conditions at particular areas or particular times, availability of seed oysters and clams, availability for purchase by lessees of shells or other material to which oyster spat may attach, and the like. Commercial production may be defined in terms of planting effort made as well as in terms of quantities of oysters and clams harvested. Provided, however, that if a lessee has made a diligent effort to effectively and efficiently manage his lease according to accepted standards and practices in such management, and because of reasons beyond his control, such as acts of God, such lessee has not and cannot meet the requirements set out by the Board under the provisions of this paragraph of this subsection, his leasehold shall not be terminated under subdivision (5) of this subsection.

(m) After receipt of notice of any occurrence listed in subsection (1), the Commissioner must mail the leaseholder a letter by registered or certified mail, return receipt requested, informing him of his intention to terminate and of the reason for the action. In the event the leaseholder takes steps within 30 days to remedy the situation upon which the notice of intention to terminate was based and the Commissioner is satisfied that continuation of the lease is in the best interests of the oyster and clam culture of the State, the Commissioner may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may appeal to the Director, and, if dissatisfied, to the Board. Where there is no appeal, or where an appeal does not prevail, the Director must send a final letter of termination to the leaseholder by registered or certified mail, return receipt requested. The final letter of termination may not be mailed sooner than 30 days after receipt by the leaseholder of the Commissioner's notice of intention to terminate, as evidenced by the return receipt. The lease is terminated effective at midnight on the day the final notice of termination is received by the leaseholder, as evidenced by the return receipt. The final notice of termination may not be issued pending hearing of any appeal by the Director or by the Board.

(n) Upon final termination of any leasehold, the bottom in question is thrown open to the public for use in accordance with laws and regulations governing use of public grounds generally. Agents of the Commissioner are required as

soon as possible after termination of lease to remove all markers denominating the area of the leasehold as a private bottom.

(o) Every year between January 1 and February 15 the Commissioner must mail to all leaseholders a notice of the annual rental due and include forms designed by him for determining the amount of shellfish or shells planted on the leasehold during the preceding calendar year, the amount of harvest gathered, and the names and addresses of those to whom the harvest was sold or delivered. Such forms may contain other pertinent questions relating to the utilization of the leasehold in the best interests of the oyster and clam culture of the State, and must be executed and returned by the leaseholder with the payment of his rental. Any leaseholder or his agent executing such forms for him who knowingly makes a false statement on such forms is guilty of a misdemeanor punishable in the discretion of the court.

(p) All leases and renewal leases granted after the effective date of this article are made subject to this article and to reasonable amendment of governing statutes, regulations of the Board, and requirements imposed by the Commissioner or his agents in regulating the use of the leasehold or in processing applications or rentals. This includes such statutory increase in rentals as may be necessitated by changing conditions and refusal to renew lease after expiration, in the discretion of the Board. No increase in rentals, however, may be given retroactive effect.

The General Assembly declares it to be contrary to public policy for the oyster and clam bottoms which were leased prior to January 1, 1966, and which are not being used to produce oysters and clams in commercial quantities to continue to be held by private individuals, thus depriving the public of a resource which belongs to all the people of the State. Therefore, when the Commissioner determines, after due notice to the lessee, and after opportunity for the lessee to be heard, that oysters or clams are not being produced in commercial quantities, due to the lessee's failure to make diligent effort to produce oysters and clams in commercial quantities, the Commissioner may decline to renew, at the end of the current term, any oyster or clam bottom lease which was executed prior to January 1, 1966. The lessee may appeal the denial of the Commissioner to renew the lease to the Board in which event the lessee shall be granted an opportunity to be heard, *de novo*, by the Board and the burden of proof, by the greater weight of the evidence, shall be on the lessee. The Board, by majority vote, may affirm or reverse the action of the Commissioner. No appeal shall be allowed from the action of the Board. (1893, c. 287, s. 1; Rev., s. 2371; 1909, c. 871, ss. 1-9; 1919, c. 333, s. 6; C. S., ss. 1902-1911; Ex. Sess. 1921, c. 46, s. 1; 1933, c. 346; 1953, cc. 842, 1139; 1963, c. 1260, ss. 1-3; 1965, c. 957, s. 2; 1967, c. 24, s. 16; c. 88; c. 876, s. 1.)

**Local Modification.**—Brunswick: 1967, c. 876, s. 2.

**Editor's Note.**—

Former § 113-202, as last amended by Session Laws 1967, c. 24, s. 16, was repealed by Session Laws 1967, c. 88. Present § 113-202, covering the same subject matter was enacted by Session Laws 1967, c. 876, s. 1.

**Lease Constitutes Contract That May Not Be Abrogated by Subsequent Statute.**

—While there is no vested right in the provisions of a statute, where a person has leased the bottom of waters from the State for oyster beds pursuant to former law, the lease constitutes a contract between the lessee and the State, and the State may not by subsequent statute abrogate the terms of the contract, either as to duration and renewals or the amount of rent. *Oglesby v. Adams*, 268 N.C. 272, 150 S.E.2d 383 (1966).

**§ 113-203. Transplanting of oysters and clams.**

(d) It is lawful to transplant to private beds in North Carolina oysters taken from public beds designated by the Board as natural seed oyster areas. Such areas shall be designated as natural seed oyster areas in the following manner:

A petition shall be filed with the Commissioner by the board of county commissioners of the county in which such area is located requesting the designation of



and describing the area proposed as a natural seed oyster area. Upon the receipt of the petition, the Commissioner shall, within six weeks of the receipt by him of such petition, cause an investigation of the area proposed to be designated as a natural seed oyster area. Such investigation shall be made by qualified biologists of the Division of Commercial and Sports Fisheries. The Commissioner shall then make a recommendation to the Board as to whether the area described in the petition should be designated as a natural seed oyster area and such area shall be so designated by the Board only after the Commissioner so recommends as being in the best interests of the State.

The Commissioner shall issue permits to all qualified individuals who are residents of North Carolina without regard to county of residence to transplant seed oysters from said designated natural seed oyster areas, setting out the quantity which may be taken, the times which the taking is permissible and other reasonable restrictions imposed to aid him in his duty of regulating such transplanting operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(e) The Board may implement the provisions of this section by regulations governing sale, possession, transportation, storage, handling, planting, and harvesting of oysters and clams and setting out any system of marking oysters and clams or of permits or receipts relating to them generally, from both public and private beds, as necessary to regulate the lawful transplanting of seed oysters and oysters or clams taken from or placed on public or private beds. (1921, c. 132, s. 2; C. S., s. 1959(b); 1961, c. 1189, s. 1; 1965, c. 957, s. 2; 1967, c. 878.)

**Editor's Note.** — The 1967 amendment As the rest of the section was not redesignated former subsection (d) as changed by the amendment, only subsections (d) and (e) are set out.

## ARTICLE 21.

### *Inland Fishing Licenses.*

#### **§ 113-276. Members of armed forces deemed residents; exemptions and exceptions.**

(c) Any person who owns land, or who leases and uses land primarily for purposes of cultivation, his spouse, and any dependent member of his family who is under 21 years of age and resides with him may fish during the open seasons on such lands without being subject to the fishing license requirements of §§ 113-271 and 113-272.

(d) Any individual under 16 years of age is exempt from the fishing license requirements of §§ 113-271 and 113-272 anywhere in the State.

(e) A resident individual fishing with hook and line in the county of his residence using natural bait is exempt from the hook-and-line fishing license requirements of § 113-271. "Natural bait" is bait which may be beneficially digested by fish. Where a municipality is bounded by a boundary river or stream, residents of the county in which the municipality is located may fish in the boundary river or stream from those banks of such river or stream in any adjoining county lying directly opposite to the banks of the municipality in question and be deemed fishing within their county for the purposes of the exemption contained in this subsection. The same is deemed true of fishing from the banks of any island in the boundary river or stream within the area opposite the banks of the municipality or municipalities. For the purposes of this section, a boundary river or stream is such portion of a river or stream which either forms a county boundary line or follows the course of such a line. Such line may follow the middle, thread, some former channel, the edge, or some other course in, along, under, or touching the

waters of such river or stream so long as the course of the river or stream substantially represents or follows the course of such boundary line.

(1967, cc. 127, 654.)

**Editor's Note.**—The first 1967 amendment rewrote subsections (c) and (d).

The second 1967 amendment added all that part of subsection (e) following the second sentence.

As the rest of the section was not changed by the amendments, only subsections (c), (d) and (e) are set out.

#### ARTICLE 23A.

##### *Promotion of Coastal Fisheries and Seafood Industry.*

**§ 113-308. Definitions.**—The definitions as given in G.S. 113-128 shall apply to this article, except that the following will additionally apply:

- (1) **Agency:** A group or an association which shall make applications and otherwise act for the fishing and seafood industry or a distinguishable part thereof. (1967, c. 890, s. 1.)

**§ 113-309. Declaration of policy.**—It is declared to be in the interest of the public welfare of North Carolina that those engaged in "coastal fisheries," as defined in G.S. 113-129, shall be permitted and encouraged to act jointly and co-operatively for the purposes of promoting the common good, welfare, and advancement of their industry. (1967, c. 890, s. 2.)

**§ 113-310. Certain activities not to be deemed illegal or in restraint of trade.**—No association, meeting or activity undertaken in pursuance of the provisions of this article and intended to benefit all of the coastal fisheries or distinguishable part thereof hereinunder certified by the Board shall be deemed or considered illegal or in restraint of trade. (1967, c. 890, s. 3.)

**§ 113-311. Referendum and assessment declared to be in public interest.**—It is hereby declared to be in the interest of the public that the coastal fisheries or any distinguishable part thereof shall be permitted by referendum to be held among themselves as prescribed by this article, to levy upon themselves an assessment on such respective catches, volume, landings, income, or production for the purposes of promoting the common good, welfare, and advancement of the fishing and seafood industry of North Carolina, in addition to any and all taxes, levies, and licenses in effect on June 22, 1967, or that may be enacted and levied or imposed subsequently. (1967, c. 890, s. 4.)

**§ 113-312. Application to Board for authority to conduct referendum.**—Any agency fairly representative of any distinguishable part or all of the fishing and seafood industry, may at any time make application in writing or petition to the Board for certification and approval to conduct a referendum among the coastal fisheries or any distinguishable part thereof for the purpose of levying an assessment under the provisions of this article, collecting, and utilizing the proceeds for the purposes stated in such referendum and as set forth in this article. (1967, c. 890, s. 5.)

**§ 113-313. Action of Board on application.**—Upon receiving an application or petition as herein provided, the Board shall at its next regular quarterly meeting consider such application as follows:

- (1) The Board shall determine if the agency is in fact fairly representative of the coastal fisheries or distinguishable part thereof making application or petitioning for referendum and record in its minutes its determination.
- (2) The Board shall determine if the application or petition is in conformity with the provisions and purposes of this article and record in its minutes its determination.

- (3) If the Board determines in the affirmative as to (1) and (2) above, it shall authorize and empower the agency to hold and conduct a referendum on the question of whether or not members of the fishing and seafood industry, or the distinguishable part thereof, making application or petition, shall levy upon themselves an assessment under and subject to the conditions and provisions and for the purpose stated in this article. (1967, c. 890, s. 6.)

**§ 113-314. Agency to determine time and place of referendum, amount and basis of assessment, etc.; notice of referendum.**—The agency shall fix, determine, and publicly announce such referendum at least 30 days before the date set for such referendum, the date, hours, and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if favorably voted upon, and the general purposes to which said amount so collected shall be applied. Such public notice shall be published at least once 20 days prior to the election in one or more newspapers having general circulation in the area where the vote is to be taken. (1967, c. 890, s. 7.)

**§ 113-315. Maximum assessment.**—No assessment levied on any commodity under the provisions of this article shall exceed one percent (1%) of the average value of this commodity during the next three years for which published statistics by the State of North Carolina or the federal government are available next preceding the application or petition. (1967, c. 890, s. 8.)

**§ 113-315.1. Arrangements for and management of referendum; expenses.**—The arrangements for and management of any referendum conducted under the provisions of this article shall be under the direction of the agency duly certified and authorized to conduct the same, and any and all expenses in connection herewith shall be borne by the agency. (1967, c. 890, s. 9.)

**§ 113-315.2. Referendum may be by mail ballot or box ballot; who may vote.**—Any referendum conducted under the provisions of this article may be held by mail ballot or by box ballot as may be determined and publicly announced as herein provided by the agency before such referendum is called. A person licensed by the Department of Conservation and Development to engage in business and commerce as may be directly affected by the paying of the assessment, or anyone who would be subject to paying such assessment should the question be voted in the affirmative, shall be eligible and may vote in such referendum. (1967, c. 890, s. 10.)

**§ 113-315.3. Preparation and distribution of ballots; conduct of referendum; canvass and declaration of results.**—The duly certified agency shall prepare and distribute in advance of such referendum all necessary ballots for the purpose thereof, and shall under rules and regulations drawn up and promulgated by said agency, arrange for the necessary poll holders or officials for conducting the said referendum; and following said referendum and within 10 days thereafter the duly certified agency shall canvass and publicly declare the result of such referendum; except that in the event a mail ballot is used, a mail ballot shall be posted by registered mail on a prearranged date at least 30 days following announcement of same to each duly licensed voter by the agency, and a return, self-addressed envelope of suitable size and construction for containing the completed ballot with ample postage affixed shall be enclosed along with complete instructions on the voting procedure, these instructions stating that the ballot should be marked by the voter to indicate and show his preference, then inserted into the return envelope, sealed, and posted or returned within 10 days of the date of the original or first posting, and on a predesignated date and hour at least 15 days after the original mailing and at an open and public meeting, the return envelopes



described above shall be opened, the ballots counted, tabulated, and the results publicly declared by the agency or its authorized representatives. (1967, c. 890, s. 11.)

**§ 113-315.4. Levy and collection of assessment; use of proceeds and other funds.**—If in such referendum called under the provisions of this article two thirds or more of the voters eligible and voting vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum, then such assessment shall be collected annually, or more often as predetermined by the agency, for the three years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules, and regulations as may be determined by the agency prior to the announcement of the referendum and included in the announcement of the referendum; said assessment so collected shall be paid into the treasury of the agency, to be used together with other funds, including donations and grants from individuals, firms, governmental agencies, or corporations, and from other fees, dues, or assessments, for the purpose set out in the referendum. (1967, c. 890, s. 12.)

**§ 113-315.5. Alternative method for collection of assessment.**—As an alternate method for the collection of assessments provided for in § 113-310 [§ 113-315.4], upon the request or petition of the agency and action by the Board as prescribed in § 113-313, the Commissioner shall notify, by registered letter, all persons or firms licensed by the Department of Conservation and Development to engage in business and commerce as may be directly affected by the paying of the assessment, that on and after the date specified in the letter the assessment shall become due and payable, and shall be remitted by said persons or firms to the Commissioner who shall thereupon pay the amount of the assessments to the agency. The books and records of all such persons and firms shall at all times during regular business hours be open for inspection by the Commissioner or his duly authorized agents. (1967, c. 890, s. 13.)

**Editor's Note.** — The reference “§ 113-315.4” inserted in brackets following “§ 113-310” is suggested as a correction for the reference in Session Laws 1967, c. 890, s. 13, to s. 3 of that act, codified as § 113-310.

**§ 113-315.6. Subsequent referendum where assessment defeated.**—In the event such referendum as herein provided for shall not be voted on affirmatively by two thirds or more of the voters eligible and voting, then the agency shall have full power and authority to call another referendum for the purposes herein set forth at any time after the next succeeding 12 months, on the question of an assessment for three years. (1967, c. 890, s. 14.)

**§ 113-315.7. Subsequent referendum where assessment adopted.**—In the event such referendum as herein provided for shall be voted on affirmatively by two thirds or more of the voters eligible and voting, then the agency shall in its discretion have full power and authority to call and conduct during the third year after the latest referendum another referendum for the purpose set forth herein for the next ensuing three years. (1967, c. 890, s. 15.)

**§ 113-315.8. Refund of assessment.**—Any person or firm hereinafter assessed shall have the right to demand of and receive from the treasurer or disbursing office of the agency a refund of such assessment so collected, provided such demand for refund is made in writing within 30 days from the end of the assessment year which shall be determined by the agency. (1967, c. 890, s. 16.)

**§ 113-315.9. Bond of treasurer or financial officer of agency; audit.**—Before collecting and receiving such assessments, such treasurer or financial officer shall give bond to the agency to run in favor of the agency in the amount of the estimated total of such assessments as will be collected, and from time to time the agency may alter the amount of such bond which, at all times, must be

equal to the total financial assets of the agency, such bond to have as surety thereon a surety company licensed to do business in the State of North Carolina, and to be in the form and amount approved by the agency and to be filed with the chairman or executive head of such agency.

The Board shall cause an annual audit to be made of the financial records of the agency and shall cause a copy of the audit, or a summary thereof, to be published at least once in one or more newspapers having general circulation in the area where the assessments are made. (1967, c. 890, s. 17.)

#### ARTICLE 24.

##### *Miscellaneous Transitional Provisions.*

**§ 113-322. Certain river designated as commercial fishing waters.**—Notwithstanding any other provision of this chapter, or any rule, regulation, or administrative decision of Commission, the following described areas are hereby made and designated commercial fishing waters:

White Oak River, from the point where Stella Bridge crosses said river, to Grants Creek. (1967, c. 1114.)

**Cross Reference.**—For provision that all fishing waters shall apply to coastal fishing waters, see § 113-129.

### Chapter 114.

#### Department of Justice.

##### Article 1.

##### Attorney General.

Sec.

114-4.2a. Assistant attorney general assigned to State Insurance Department.

#### ARTICLE 1.

##### *Attorney General.*

**§ 114-2. Duties.**—It shall be the duty of the Attorney General:

- (1) To defend all actions in the appellate division in which the State shall be interested, or is a party; and also when requested by the Governor or either branch of the General Assembly to appear for the State in any other court or tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested.
- (2) At the request of the Governor, Secretary of State, Treasurer, Auditor, Utilities Commission, Commissioner of Banks, Insurance Commissioner or Superintendent of Public Instruction, he shall prosecute and defend all suits relating to matters connected with their departments.
- (3) To represent all State institutions, including the State's prison, whenever requested so to do by the official head of any such institution.
- (4) To consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office.
- (5) To give, when required, his opinion upon all questions of law submitted to him by the General Assembly, or by either branch thereof, or by the Governor, Auditor, Treasurer, or any other State officer.
- (6) To pay all moneys received for debts due or penalties to the State immediately after the receipt thereof into the treasury.
- (7) To compare the warrants drawn by the Auditor on the State treasury with the laws under which they purport to be drawn. (1868-9, c. 270,

s. 82; 1871-2, c. 112, s. 2; Code, s. 3363; 1893, c. 379; 1901, c. 744; Rev., s. 5380; C. S., s. 7694; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97; 1967, c. 691, s. 51.)

**Editor's Note.**—

The 1967 amendment, effective July 1,

1967, substituted "appellate division" for "Supreme Court" in subdivision (1).

**§ 114-4. Assistants; compensation; assignments.**—The Attorney General shall be allowed to appoint five assistant attorneys general, and each of such assistant attorneys general shall be subject to all the provisions of chapter 126 of the General Statutes relating to the State Personnel System. Two assistant attorneys general shall be assigned to the State Department of Revenue. The other assistant attorneys general shall perform such duties as may be assigned by the Attorney General: Provided, however, the provisions of this section shall not be construed as preventing the Attorney General from assigning additional duties to the assistant attorneys general assigned to the State Department of Revenue. (1925, c. 207, s. 1; 1937, c. 357; 1945, c. 786; 1947, c. 182; 1967, c. 260, s. 1.)

**Editor's Note.**—The 1967 amendment substituted "shall be subject to all the provisions of chapter 126 of the General Statutes relating to the State Personnel

System" for "shall receive a salary to be fixed by the Director of the Budget" at the end of the first sentence.

**§ 114-4.2a. Assistant attorney general assigned to State Insurance Department.**—The Attorney General is hereby authorized to appoint an assistant attorney general, in addition to those now provided by law, to be assigned to the Commissioner of Insurance and the State Insurance Department. Such assistant attorney general shall perform such additional duties as may be assigned to him by the Attorney General, and shall otherwise be subject to all provisions of the statutes relating to assistant attorneys general. The salary of said assistant attorney general and a secretary shall be paid from funds appropriated to the Insurance Department. (1967, c. 1115, s. 1.)

**Editor's Note.**—Section 3, c. 1115, Session Laws 1967, makes the act effective July 1, 1967.

**§ 114-7. Salary of Attorney General.**—The Attorney General shall receive an annual salary of twenty thousand dollars (\$20,000.00), payable monthly. (1929, c. 1, s. 2; 1947, c. 1043; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 3; 1967, c. 1130; c. 1237, s. 3.)

**Editor's Note.**—

Both 1967 amendments increased the salary from \$18,000 to \$20,000. The first amendatory act provided that the increase

should be effective Jan. 1, 1969, and the second amendatory act was made effective July 1, 1967.

## ARTICLE 2.

### *Division of Legislative Drafting and Codification of Statutes.*

**§ 114-9.1. Revisor of Statutes.**—The member of the staff of the Attorney General who is assigned to perform the duties prescribed by § 114-9 (3) shall be known as the Revisor of Statutes and he shall be subject to all the provisions of chapter 126 of the General Statutes relating to the State Personnel System. (1947, c. 114, s. 1; 1957, c. 541, s. 10; 1967, c. 260, s. 2.)

**Editor's Note.**—

The 1967 amendment substituted "and he shall be subject to all the provisions of chapter 126 of the General Statutes relating to the State Personnel System" for

"and shall receive a salary to be fixed by the Governor subject to the approval of the Advisory Budget Commission" at the end of the section.



## Chapter 115.

### Elementary and Secondary Education.

#### SUBCHAPTER III. SCHOOL DISTRICT ORGANIZATION.

##### Article 8.

##### Creating and Consolidating School Districts and School Administrative Units.

Sec.

115-74.1. Consolidation and merger of county and city school administrative units located in the same county.

#### SUBCHAPTER VI. SCHOOL PROPERTY.

##### Article 15.

##### School Sites and Property.

115-133.2. Power of boards of education to offer rewards for information leading to arrest, etc., of persons damaging school property.

#### SUBCHAPTER VII. EMPLOYEES.

##### Article 17.

##### Principals' and Teachers' Employment and Contracts.

115-142. Contracts with teachers, principals, and other professional employees; termination of contracts; continuing contracts; notice.

#### SUBCHAPTER IX. SCHOOL TRANSPORTATION.

##### Article 22.

##### School Buses.

Sec.

115-190.1. Transportation continued for area annexed to municipality or included by consolidation of municipalities.

#### SUBCHAPTER XIA. COMPACT.

##### Article 43.

##### Interstate Compact for Education.

115-349. Enactment of compact.

115-350. Establishment of North Carolina Education Council.

115-351. Filing copy of bylaws with Secretary of State.

#### SUBCHAPTER XII. EXPERIMENTATION AND RESEARCH.

##### Article 44.

##### North Carolina Advancement School.

115-352. Continuation of North Carolina Advancement School by the State Board of Education.

115-353. Purpose of the North Carolina Advancement School.

115-354. Board of governors.

115-355. Responsibilities of the board of governors.

115-356. State Board of Education to appoint director.

115-357. Responsibilities of the director.

#### SUBCHAPTER I. GENERAL PROVISIONS.

##### ARTICLE 1.

##### *State Plan for Public Education.*

##### § 115-4. Administrative units classified.

An "administrative unit" is not a "school district" within the meaning of N.C. Const.,

Art. II, § 29. *Hobbs v. County of Moore*, 267 N.C. 665, 149 S.E.2d 1 (1966).

##### § 115-7. Term "district" defined.

The term "school district" in N.C. Const., Art. II, § 29, means a "district" provided for in N.C. Const., Art. IX, § 3. That is, a "school district" is an area with-

in a county in which one or more public schools must be maintained. It is so defined in this section. *Hobbs v. County of Moore*, 267 N.C. 665, 149 S.E.2d 1 (1966).

## SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

## ARTICLE 2.

*The State Board of Education.***§ 115-11. Powers and duties generally.**

- (11) Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County.—The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.

(1967, c. 643, s. 1.)

**Editor's Note.—**

The 1967 amendment rewrote subdivision (11).

As the rest of the section was not changed by the amendment, only subdivision (11) is set out.

## ARTICLE 3.

*State Superintendent of Public Instruction.*

**§ 115-13. Office and salary.**—The Superintendent shall keep his office in the Education Building in Raleigh, and his salary shall be ten thousand dollars (\$10,000.00) a year, payable monthly.

From and after the time the State Superintendent of Public Instruction shall take the oath of office and begin serving the term for which he is to be elected in 1956, he shall receive an annual salary of twenty thousand dollars (\$20,000.00): Provided, that said salary shall be paid out of the Contingency and Emergency Fund if funds for same are not available in the general fund for the biennium ending June 30, 1957. (1955, c. 1372, art. 3, s. 2; c. 1374; 1963, c. 1178, s. 2; 1967, c. 1130; c. 1237, s. 2.)

**Editor's Note.—**

Both 1967 amendments increased the salary in the second paragraph from \$18,000 to \$20,000. The first amendatory act pro-

vided that the increase should be effective Jan. 1, 1969, and the second amendatory act was made effective July 1, 1967.

## ARTICLE 5.

*County and City Boards of Education.***§ 115-18. How constituted.**

**Local Modification.**—Bladen: 1967, c. 258; Caldwell: 1967, c. 787; Randolph: 1967, c. 739.

**Amendment Effective July 1, 1969.**—Session Laws 1967, c. 972, s. 1, effective July 1, 1969, rewrites this section so that it will read as follows:

"The county board of education in each county shall consist of not less than three nor more than nine members. Members

shall be elected, as hereinafter provided, for a term of four years."

Section 7 of the amendatory act provides: "The provisions of this act shall not apply to any county board of education that uses as a method of selecting the members to its board of education an election by a vote of the people as of the effective date of this act."

### § 115-19. How nominated and elected.

**Local Modification.**—Caldwell: 1967, c. 787; Randolph: 1967, c. 739.

**Amendment Effective July 1, 1969.**—Session Laws 1967, c. 972, s. 2, effective July 1, 1969, rewrites this section so that it will read as follows:

§ 115-19. How elected. — The members of the county board of education in each county that does not on July 1, 1969, elect its members by a vote of the people, shall be elected in one of the following ways:

- (1) On a partisan basis in the same manner as members of the General Assembly; or
- (2) On a nonpartisan basis at the time of the primary election for nomination of candidates for the General Assembly.

The names of candidates for election to county boards of education on a nonpartisan basis and held pursuant to the provisions of this act shall be printed on the ballots without reference to any party affiliation and any qualified voter residing within the county shall be entitled to vote. In elections held on a nonpartisan basis under the provisions of this act, the right of any qualified voter to vote shall not be affected by the political party affiliation under which he is registered or by the fact that he is registered as an independent.

The terms of office of the members shall be staggered so as nearly equal to one half as possible and shall expire every two years. At the initial election of the members of the county board of education, pursuant to the provisions of this act, an appropriate number of members shall be elected for two-year terms and four-year terms so as

to comply with the above requirement, and in any case in which the number of terms that expire every two years is unequal, a larger number of members shall be elected for longer terms. The candidates elected who receive the highest number of votes shall serve four-year terms and the candidates elected who receive the fewest number of votes shall serve two-year terms. Nothing herein shall shorten the terms of office of members of county board of education coming under the provisions of this act. In the event the terms of office of members of boards of education coming under the provisions of this act are staggered, successors shall be elected as the terms of existing members expire for two-year terms.

The General Assembly may designate the number of members constituting the county board of education, the districts if any in which they run, and the method to be used in electing the same, for each county electing its board pursuant to the provisions of this act. In the event the General Assembly shall fail to establish the size of said boards or the method of election of same for any such county, said county shall have a board of education consisting of five members who shall be elected at large on a nonpartisan basis as hereinabove set out.

This section shall not have the effect of repealing any local or special acts relating to boards of education of any particular counties whose membership to said boards is chosen by a vote of the people.

As to application of the amendment, see note to § 115-18.

### § 115-20. County board of elections to provide for nominations.

**Local Modification.**—Caldwell: 1967, c. 787; Randolph: 1967, c. 739.

**Amendment Effective July 1, 1969.**—Session Laws 1967, c. 972, s. 3, effective July 1, 1969, will substitute "elections of county boards of education" for "such nominations" in the first sentence and add a second sentence that will read as

follows: "The county board of elections of each county shall file with the State Board of Elections a statement specifying the size and method of election of members of its county board of education."

As to application of the amendment, see note to § 115-18.

### § 115-22. Members to qualify.

**Amendment Effective July 1, 1969.**—Session Laws 1967, c. 972, s. 4, effective July 1, 1969, rewrites this section so that it will read as follows:

"Those persons who shall be elected members of the county boards of education must qualify by taking the oath of office on or before the first Monday in December next succeeding their election. A failure

to qualify within that time shall constitute a vacancy which shall be filled as set out in G.S. 115-24. Those persons appointed to fill a vacancy must qualify within 30 days after notification. A failure to qualify within that time shall constitute a vacancy.

"This section shall not have the effect of repealing any local or special acts relating to boards of education of any particular



counties whose membership to said boards is chosen by a vote of the people."

As to application of the amendment, see note to § 115-18.

### § 115-23. Vacancies in nominations for membership on county boards.

**Amendment Effective July 1, 1969.**—Session Laws 1967, c. 972, s. 5, effective July 1, 1969, rewrites this section so that it will read as follows:

"If any candidate nominated on a partisan basis shall die, resign, or for any reason become ineligible or disqualified be-

tween the date of his nomination and the time for the election, such vacancy caused thereby may be filled by the actions of the county executive committee of the political party of such candidate."

As to application of the amendment, see note to § 115-18.

### § 115-24. Vacancies in office.

**Local Modification.**—Caldwell: 1967, c. 787; Randolph: 1967, c. 739.

**Amendment Effective July 1, 1969.**—Session Laws 1967, c. 972, s. 6, effective July 1, 1969, rewrites this section so that it will read as follows:

"All vacancies in the membership of the boards of education whose members are elected pursuant to the provisions of G.S. 115-19 by death, resignation, or other

causes shall be filled by appointment by the remaining members of the board, of a person to serve until the next election of members of such board, at which time the remaining unexpired term of the office in which the vacancy occurs shall be filled by election."

As to application of the amendment, see note to § 115-18.

### § 115-29. Compensation of board members.

**Local Modification.**—Polk: 1967, c. 403, amending 1957, c. 210; Warren: 1967, c. 507.

### § 115-32. Power to subpoena and to punish for contempt.

Quoted in *Johnson v. Branch*, 242 F. Supp. 721 (E.D.N.C. 1965).

### § 115-34. Appeals to board of education and to superior court.

Quoted in *Johnson v. Branch*, 242 F. Supp. 721 (E.D.N.C. 1965).

### § 115-35. Powers and duties of county and city boards generally.

**Cross Reference.**—As to duty of board of education to provide school buildings and equipment, see § 115-129 and note thereto.

Applied in *Dilday v. Beaufort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

**§ 115-39. Requirements and limitations of board in selecting superintendent and his term of office.**—At a meeting to be held on the first Monday in April, one thousand nine hundred fifty-seven, or as soon thereafter as practicable, and biennially or quadrennially thereafter during the month of April, the various county boards of education named by the General Assembly which convened in February of such year or elected by the people at the preceding general election, as the case may be, shall meet and elect a county superintendent of schools, subject to the approval of the State Superintendent of Public Instruction and the State Board of Education. Such superintendent shall take office on the following July first and shall serve for a term of two or four years, or until his successor is elected and qualified. The superintendent shall be elected for a term of either two or four years, which term shall be in the discretion of the county board of education. A certification to the county board of education by the State Superintendent of Public Instruction showing that the person proposed for the office of county superintendent of schools holds a superintendent's certificate and has had three years' experience in school work in the past ten years, together with a doctor's certificate showing the person to be free from any contagious or communi-

cable disease, shall make any person eligible for this office: Provided, the requirement of a superintendent's certificate shall not be applicable to persons now serving as superintendents. Immediately after the election, the chairman of the county board of education shall report the name and address of the person elected to the State Superintendent of Public Instruction.

If any board of education shall elect a person to serve as superintendent of schools in any administrative unit who is not qualified, or cannot qualify, according to this section, such election is null and void and it shall be the duty of such board of education to elect a person who can qualify.

In all city administrative units, the superintendent of schools shall be elected by the city board of education of such unit, to serve for a period of either two or four years, which term of office shall be within the discretion of the board; and the qualifications, provisions and approval shall be the same as for county superintendents. The election shall be held biennially or quadrennially, as the case may be, during the month of April. (1955, c. 1372, art. 5, s. 22; 1957, c. 686, s. 1; 1967, c. 697.)

**Editor's Note.**—The 1967 amendment made changes in the first and last paragraphs so as to authorize a four-year term

for the superintendent of education, in the discretion of the county or city board of education.

**§ 115-51. School food services provided by county and city boards of education.**—As a part of the function of the public school system, county and city boards of education may, in their discretion, provide school food services in the schools under their jurisdiction. All school food services made available under this authority shall be provided in accordance with standards and regulations recommended by the State Superintendent of Public Instruction and approved by the State Board of Education.

All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced price lunches to indigent children and for no other purpose. The term, "cost of operation," shall be defined as actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. Personnel shall be defined as food service supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food. Provided that food service personnel shall be paid from the funds of food services only for services rendered in behalf of lunchroom services. Any cost incurred in the provisions and maintenance of school food services over and beyond the "cost of operation" as defined in this section shall be included in the budget request filed annually by county and city boards of education with boards of county commissioners. It shall not be mandatory that the provisions of G.S. 115-52 and 143-129 be complied with in the purchase of supplies and food for such school food services. (1955, c. 1372, art. 5, s. 34; 1965, c. 912; 1967, c. 990.)

**Editor's Note.**—

The 1967 amendment substituted "providing food services, and the cost of" for "preparing and serving food, and the cost

of such inexpensive and expendable" in the fourth sentence, and added the present fifth and sixth sentences.

**§ 115-53. Liability insurance and waiver of immunity as to torts of agents, etc.**

**Without Waiver Liability Limited, etc.**—  
In accord with original. See *Brown v.*

Charlotte-Mecklenburg Bd. of Educ., 267  
N.C. 740, 149 S.E.2d 10 (1966).

## ARTICLE 7.

*School Committees—Their Duties and Powers.***§ 115-72. How to employ principals, teachers, janitors and maids.**

**Local Modification.**—By virtue of Session Laws 1967, c. 1112, Polk should be stricken from the replacement volume

A court may not usurp the discretionary power of the school committee, but must judge the constitutionality of its action on the basis of the facts which were before the board and on its logic. *Johnson v. Branch*, 364 F.2d 177 (4th Cir. 1966).

**Action of School Committee in Refusing to Renew Teacher's Contract Held Arbitrary and Capricious.** — See *Johnson v. Branch*, 364 F.2d 177 (4th Cir. 1966) (decided prior to 1967 amendment to § 115-142, providing contracts continue from year to year until board of education determines employee is not to be retained for succeeding school year).

## SUBCHAPTER III. SCHOOL DISTRICT ORGANIZATION.

## ARTICLE 8.

*Creating and Consolidating School Districts and School Administrative Units.*

**§ 115-74. Creation and modification of school districts by State Board of Education.**—The State Board of Education, upon the recommendation of the county board of education, shall create in any county administrative unit a convenient number of school districts. Such district organization may be modified in the same manner in which it was created when it is deemed necessary. Provided that when changes in district lines are made between and among school districts that have voted upon themselves the same rate of supplemental tax, such changes in district lines shall not have the effect of abolishing any of such districts or of abolishing any supplemental taxes that may have been voted in any of such districts: Provided further, that nothing in this section shall affect the right of any city school administrative unit or special tax district which now exists for the purpose of retiring debt service, to have the indebtedness of such district taken over by the county as provided by law, and nothing herein shall be construed to restrict the county board of education or the board of county commissioners in causing such indebtedness to be assumed by the county as provided by law. (1955, c. 1372, art. 8, s. 1; 1959, c. 432; 1967, c. 643, s. 2.)

**Editor's Note.**—The 1967 amendment added, as the second proviso to the first paragraph, the proviso which formerly appeared at the end of the second para-

graph, and deleted the remainder of the second paragraph, relating to consolidation of city and county administrative units.

**§ 115-74.1. Consolidation and merger of county and city school administrative units located in the same county.**—City school administrative units may be consolidated and merged with contiguous city school administrative units and with county school administrative units upon approval by the State Board of Education of a plan for consolidation and merger submitted by the boards of education involved and bearing the approval of the board of county commissioners.

County and city boards of education desiring to consolidate and merge their school administrative units may do so by entering into a written plan which shall set forth the conditions of merger. The provisions of the plan shall be consistent with the General Statutes and shall contain, but not be limited to, the following:

- (1) The name by which the merged school administrative unit shall be identified and known
- (2) The effective date of the merger
- (3) The establishment and maintenance of a board of education which shall administer all the public schools of the newly created unit, including
  - a. The termination of any terms of office proposed in the reorganization of the board



- b. The method of constituting and continuing the board of education, the length of the members' terms of office, the dates of induction into office, the organization of the board, the procedure for filling vacancies, and the compensation to be paid members of the board for expenses incurred in performance of their duties
- (4) The authority, powers, and duties of the board of education with respect to the employment of personnel, the preparation of budgets, and any other related matters which may be particularly applicable to the merged unit not inconsistent with the General Statutes
- (5) The transfer of all facilities, properties, structures, funds, contracts, deeds, titles, and other obligations, assets and liabilities to the board of education of the merged unit
- (6) The continuation of any supplemental school tax which may be in effect in either or all administrative units involved
- (7) A public hearing, which shall have been announced at least ten days prior to the hearing, on the proposed plan of merger
- (8) A statement as to whether the question of merger, in accordance with the projected plan, is to be contingent upon approval of the voters in the affected area
- (9) Any other condition or prerequisite to merger, together with any other appropriate subject or function that may be necessary for the orderly consolidation and merger of the school administrative units involved.

The plan referred to above shall be mutually agreed upon by the city and county boards of education involved and shall be accompanied by a certification that the plan was approved by the board of education on a given day and that the action has been duly recorded in the minutes of said board, together with a certification to the effect that the public hearing required above was announced and held. The plan, together with the required certifications, shall then be submitted to the board of county commissioners for its concurrence and approval. After such approval has been received the plan shall be submitted to the State Board of Education for the approval of said State Board and the plan shall not become effective until such approval is granted. Upon approval by the State Board of Education the plan of consolidation and merger shall become final and shall be deemed to have been made by authority of law and shall not be changed or amended except by an act of the General Assembly. The written plan of agreement shall be placed in the custody of the board of education operating and administering the public schools in the merged unit and a copy filed with the Secretary of State.

The plan may be, but it is not required that it be submitted for the approval of the voters of the geographic area affected in a referendum or election called for such purpose, and such elections or referendums if held shall be held under the provisions governing elections or referendums as set forth in G.S. 115-122, with authority of the board of county commissioners to have such election or referendum conducted by the board of elections of the county. (1967, c. 643, s. 3.)

#### § 115-76. Consolidation of districts and discontinuance of schools.

**Concurrent Action by County and State Boards of Education Required for Consolidation.** — Under subdivision (1) of this section concurrent action by the county board of education and the State Board of Education after the required public hearing is essential in order to consolidate any two high schools with an average daily

attendance of 60 or more pupils. *Dilday v. Beaufort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

**Sufficient Compliance with Subdivision (1).**—See *Dilday v. Beaufort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

## SUBCHAPTER IV. REVENUE FOR THE PUBLIC SCHOOLS.

## ARTICLE 9.

*County and City Boards of Education and Budgets.*

§ 115-80. **Rules for preparation of school budgets.**—(a) **County-Wide Current Expense Fund Budget.**—County and city boards of education shall file with the appropriate tax levying authorities on or before the fifteenth day of June, on forms provided by the State Board of Education, all budgets requesting funds to operate the public schools, whether such funds are to be provided by the State or from local sources. There shall be no funds allotted for providing instruction to pupils for a term of more than one hundred eighty days either from State or local sources.

The county-wide current expense fund shall include all funds for current expenses levied by the board of county commissioners in any county to cover items for current expense purposes, and also all fines, forfeitures, penalties, poll and dog taxes, nontax funds, or any other funds, to be expended in the current expense budget and funds for vocational subjects, except those funds appropriated for such unit in the State budget.

In the preparation of the several school budgets, it shall be the first duty of county and city boards of education and the board of county commissioners to provide adequate funds for the items of expenditure included under maintenance of plant and the items under fixed charges not provided from State funds in order to protect and preserve the investment of the administrative units in the school plants.

When funds accruing by law to the board of education are not sufficient to repair, maintain and insure properly the school plants of an administrative unit, it shall be the duty of the board of county commissioners in which such unit is located to supplement these funds by a tax levy and said board is so directed and authorized.

In the event that county and city boards of education can by economy in management properly maintain, for use at all times, the school plants for a less amount than is placed to the credit of the school fund by law, it shall be in the discretion of such board of education with the approval of the board of county commissioners to use such excess to supplement any item of expenditure in its current expense fund.

Notwithstanding any other provisions of this chapter, when necessity is shown by county and city boards of education, or peculiar local conditions demand, for adding or supplementing items of expenditure in the current expense fund, including additional personnel and/or supplements to the salaries of personnel, the board of county commissioners may approve or disapprove, in part or in whole, any such proposed and requested expenditure. For those items it approves, the board of county commissioners shall make a sufficient tax levy to provide the funds: Provided, that nothing in this chapter shall prevent the use of federal or privately donated funds which may be made available for the operation of the public schools under such regulations as the State Board of Education may prescribe.

(1967, c. 1263.)

**Editor's Note.**—

The 1967 amendment rewrote the last paragraph in subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

§ 115-80.3. **Investment of moneys in reserve fund.**—The cash balance, or parts thereof, of the capital reserve fund may be deposited at interest or invested as provided by G.S. 159-28.1. (1959, c. 524; 1967, c. 798, s. 2.)

**Editor's Note.**—The 1967 amendment rewrote this section.

## SUBCHAPTER VI. SCHOOL PROPERTY.

## ARTICLE 15.

*School Sites and Property.***§ 115-125. Acquisition of sites.**

**Editor's Note.** — For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

**Applied in** *Hobbs v. County of Moore*, 267 N.C. 665, 149 S.E.2d 1 (1966).

**§ 115-129. Provisions for school buildings and equipment.**

**Board of Education Presents Needs to Commissioners.**—Each year the board of education surveys the needs of its school system with reference to buildings and equipment. By resolution it presents these needs, together with their costs, to the commissioners, who are given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped. *Dilday v. Beaufort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

*fort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

**Commissioners to Determine, etc.—**

It is the board of commissioners which is charged with the duty of determining what expenditures shall be made for the erection, repairs, and equipment of school buildings in the county. *Dilday v. Beaufort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

**But They Cannot Interfere, etc.—****Courts Cannot Interfere with Discretion of Board of Education Unless Abused.**

The board of education determines, in the first instance, what buildings require repairs, remodeling, or enlarging; whether new schoolhouses are needed; and if so, where they shall be located. Such decisions are vested in the sound discretion of the board of education, and its actions with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law. *Dilday v. Beau-*

*fort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

**§ 115-133.2. Power of boards of education to offer rewards for information leading to arrest, etc., of persons damaging school property.**—County and city boards of education are authorized and empowered to offer and pay rewards in an amount not exceeding fifty dollars (\$50.00) for information leading to the arrest and conviction of any person or persons who wilfully deface, damage or destroy property, commit acts of vandalism or commit larceny of the property belonging to the public school system under the jurisdiction of and administered by any county or city board of education. The sums and amounts necessary to pay said rewards shall be an item in the current expense budget of said county or city board of education, and said reward shall be paid out of the current expense fund. (1967, c. 369.)

## SUBCHAPTER VII. EMPLOYEES.

## ARTICLE 17.

*Principals' and Teachers' Employment and Contracts.*

**§ 115-142. Contracts with teachers, principals, and other professional employees; termination of contracts; continuing contracts; notice.**—(a) Any person other than the superintendent desiring election as a teacher, principal, or other professional employee in a county or city school administrative unit shall file his or her application in writing with the county or city superin-



tendent of such unit on such forms and in such manner as the superintendent and board of education may prescribe. A professional employee is defined as a person holding a position for which the State Board of Education has established certification requirements. It shall be the duty of all county and city boards of education to cause written contracts on forms to be furnished by the State Superintendent of Public Instruction to be executed by all teachers, principals, and other professional employees before any salary vouchers shall be paid. The contracts shall be executed in duplicate, with one copy being retained by the superintendent and the other copy being retained by the employee, and no person shall be considered an employee unless he holds a properly executed contract. Proposed contracts tendered prospective employees must be executed and returned to the superintendent within 15 calendar days after date of delivery to the individual or to the post office or otherwise they shall be considered rejected. No county or city board of education shall enter into a contract for the employment of more personnel than are allotted to that particular administrative unit by the State Board of Education unless provision has been made for the payment of the salaries of such personnel from local funds. All contracts shall be subject to the allotment of personnel by the State Board of Education and subject further to the condition that when the position for which the employee is employed is terminated the contract is likewise terminated.

(b) All contracts now or hereafter entered into between a county or city board of education and a teacher, principal, or other professional employee shall continue from year to year unless terminated as hereinafter set forth. When it shall have been determined by a county or city board of education that an employee is not to be retained for the next succeeding school year it shall be the duty of the county or city superintendent to notify the employee, by registered letter deposited in mails addressed to last known address or business address of employee prior to the close of the school year, of the termination of his contract. When it shall have been determined that the services of an employee are not acceptable for the remainder of a current school year, and that the employee should be dismissed and relieved of his position immediately, the provisions and procedures of G.S. 115-67 and G.S. 115-145 shall be applicable. (1955, c. 664; 1967, c. 223, s. 1.)

**Editor's Note.** — The 1967 amendment rewrote this section, which formerly terminated all contracts of principals and teachers at the end of the 1954-1955 term and provided for employment on a yearly basis thereafter.

Section 3, c. 223, Session Laws 1967, provides: "This act shall be in full force and effect with the issuance of contracts for the 1967-1968 school term."

For note on racial discrimination in teacher hiring and firing, see 45 N.C.L. Rev. 166 (1966), commenting on *Wheeler v. Durham City Bd. of Educ.*, 363 F.2d 738 (4th Cir. 1966) and *Chambers v. Hendersonville City Bd. of Educ.*, 364 F.2d 189 (4th Cir. 1966).

**There are no vested rights in regard to reemployment of public school teachers.** *Johnson v. Branch*, 242 F. Supp. 721 (E.D.-N.C. 1965), rev'd on other grounds, 364 F.2d 177 (4th Cir. 1966) (decided prior to the 1967 amendment to this section).

**Right to Employment for Another Year Is Distinguishable from Dismissal for Cause.**—The right to be employed or reemployed for another school year is to be

distinguished from the problem of dismissal of a teacher for cause. *Johnson v. Branch*, 242 F. Supp. 721 (E.D.N.C. 1965), rev'd on other grounds, 364 F.2d 177 (4th Cir. 1966) (decided prior to the 1967 amendment to this section).

**Reemployment of Teacher Is Discretionary.**—The decision to reemploy a teacher in North Carolina for a subsequent school term is a matter of discretion vested in the principal, who makes the recommendation to the superintendent and board of education which approve it. However, professional personnel are not at the mercy of any whimsical or arbitrary decision school administrators or a county board of education may care to make regarding their retention or reemployment. *Wall v. Stanley County Bd. of Educ.*, 259 F. Supp. 238 (M.D.N.C. 1966) (decided prior to the 1967 amendment to this section).

**But School Officials Must Act in Good Faith.**—Those connected with school administration including the county boards of education and school principals, must act in good faith and not arbitrarily, capriciously, or without just cause or be acti-

vated by selfish motives. *Wall v. Stanly County Bd. of Educ.*, 259 F. Supp. 238 (M.D.N.C. 1966).

**And Cannot Arbitrarily Deny Federally Protected Rights under Color of State Law.**—The discretion of school officials in effectuating their hiring policies does not extend to an arbitrary denial of rights

guaranteed by the federal Constitution and acts of Congress, when the denial is made under color of State law. *Johnson v. Branch*, 242 F. Supp. 721 (E.D.N.C. 1965), rev'd on other grounds, 364 F.2d 177 (4th Cir. 1966) (decided prior to the 1967 amendment to this section).

§ 115-145. Removal of principals and teachers; revocation of certificate.

Cross Reference.—See note to § 115-142.

## SUBCHAPTER VIII. PUPILS.

### ARTICLE 21.

#### *Assignment and Enrollment of Pupils.*

§ 115-176. Authority to provide for assignment and enrollment of pupils; rules and regulations.

##### **Constitutionality.**—

Although this article has been declared facially constitutional, when such a statute is applied to discriminate against negro pupils, it is given an unconstitutional application. Criteria may not be used to screen and deny negro applicants to a particular school if they are not used in the same manner to screen and deny white applicants similarly situated. *Felder v. Harnett County Bd. of Educ.*, 349 F.2d 366 (4th Cir. 1965).

**Power of Local Boards Is Only Subject to Standards and Limitations of This Article.**—The State has entrusted to the county and city boards of education the "full and complete" power to assign and reassign each child residing within its unit to a public school, subject only to the standards and limitations prescribed by the Pupil Assignment Law, including the power of the courts of North Carolina to hear de novo an appeal from the final order of the board and, thereupon, to enter the appropriate order. In re *Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

**This article imposes upon the school board, and upon the courts on appeal from it, a solemn duty**, for in applying this article to the application for the reassignment of a child, the board is dealing with an asset of the State which cannot be valued in the terms of the market place. In re *Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

**Which Board May Not Delegate.**—The Pupil Assignment Law does not authorize the school board to abdicate or delegate its duty to exercise the power so entrusted to it for the best interests of the applying child. In re *Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

**Hence, Board May Not Transfer Its**

**Power to Federal Employee.**—The school board may not, in the hope of receiving money for its school, shut its eyes to the mandate of the statute. It may not, by contract or otherwise, transfer its power to an employee of the federal government, or bind itself to exercise it as he may direct, or in any other manner than that provided in this article, or for any purpose other than that for which the State conferred the power upon it. In re *Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

**Other Factors Than Mixture of Races May Be Considered.**—There is no constitutional requirement that the school board act with the conscious purpose of achieving the maximum mixture of races in the school population. The Constitution permits the board to consider natural geographic boundaries, accessibility of particular schools, and many other factors which are unrelated to race. So long as the boundaries are not drawn for the purpose of maintaining racial segregation, the school board is under no constitutional requirement that it effectively and completely counteract all of the effects of segregated housing patterns. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 369 F.2d 29 (4th Cir. 1966).

**Assignment to School outside Administrative Unit.**—

The legislature contemplated agreements between boards acting within the framework of the statute and free to accomplish its purpose—the assignment of the individual child to the school where his or her "best interest" would be served without disruption of that school. In re *Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

The board of one administrative unit

cannot assign a child to a school in another administrative unit without the consent of the board of the other unit. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Under the Pupil Assignment Law, as amended in 1956, the board of education of one city or county administrative unit may not permit to be enrolled in one of its schools a child who resides in the territory of another unit solely upon its own willingness to do so, plus the desire of the child or its parents to attend that school. Nothing else appearing, the assent of the board of the unit in which the child resides must be obtained. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

The requirement that a child residing in one unit may not be placed in school in an-

other unit without the assent of his resident unit's board is a protection to each unit against raids upon its student body by another unit so as to gain additional teacher allotment by the State on account of increased enrollment, or so as to gain accomplished athletes, or for any other purpose. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is not within the fair intendment of this law that a board may enter into an agreement with some other agency or person that, come what may and regardless of the welfare of the applying child, the board will never agree to assign any child to any school in another county. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

### § 115-178. Application for reassignment; notice of disapproval; hearing before board.

**Cross Reference.**—See note to § 115-176.

**And Emphasis Is on Welfare of Child, etc.**—

In accord with original. See In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is the best interest of the applying child which must guide the deliberations and control the decision of the board, unless the granting of the application will interfere with the proper administration of the school to which the child seeks reassignment or will endanger the proper instruction, the health or the safety of the other children enrolled therein. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

**No Agreement Can Authorize Board to Deny Reassignment Required by Statute.**—No agreement of the board with anyone, be he an employee of the federal government or otherwise, can authorize the board to deny an application for reassignment

which the legislature, by a statute within its authority to enact, has provided that the board shall grant. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

**When Reassignment Must Be Made.**—

It is the duty of the board to reassign if the reassignment of the child to a new school will be for the best interest of the child and will not interfere with the proper administration of the school. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

**System of Free Transfers Held Constitutionally Permissible.**—Where a system of free transfers is the only means by which many negroes can attend integrated schools, and each pupil in the system has the option, the existence of the right of transfer is constitutionally permissible. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 369 F.2d 29 (4th Cir. 1966).

### § 115-179. Appeal from decision of board.

**"De Novo".**—

The Pupil Assignment Law provides that, upon appeal from the board to the superior court, the matter shall be heard de novo. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

In a matter being heard in the superior court de novo, it is as if it were before the court in the first instance. That is, the court has the same powers, the same duties, and the same standards to guide it as the board had in the first instance. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

**No agreement of the board can deprive the courts of this State of jurisdiction conferred upon them by this section, or bar the court, before which an appeal from the board's order is brought as provided by**

this section, from entering the judgment prescribed in such case by this section. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

**And Courts Will Determine Right to Reassignment According to Statutory Standards.**—So long as the Pupil Assignment Law remains the law of North Carolina, the courts of this State in passing upon appeals from orders of the boards of education concerning applications for the reassignment of children to the public schools, will determine the right to reassignment in accordance with the standards prescribed by the statute, not pursuant to agreements between the board and another or letters from such other party setting forth his ex parte construction of the al-



leged agreement. *In re Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

**Power of Superior Court.—**

On appeal, the superior court has the authority to reassign the child to the school which he and his parents want him to attend, if that is in the best interest of the child and the child's enrollment therein will not interfere with the proper administration of that school or endanger the

instruction, the health or the safety of the other pupils there enrolled. *In re Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

Upon appeal, the superior court has the authority to reassign the child to a school of another administrative unit, even though the board of education of the administrative unit wherein the child resides objects. *In re Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

## SUBCHAPTER IX. SCHOOL TRANSPORTATION.

### ARTICLE 22.

#### *School Buses.*

#### § 115-180. Authority of county and city boards of education.

State Board Relieved, etc.—

In accord with original. See *Brown v.*

Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966).

#### § 115-183. Use and operation of school buses.

Local Modification.—*Buncombe*: 1967, c. 490.

§ 115-190.1. **Transportation continued for area annexed to municipality or included by consolidation of municipalities.**—In each and every area of the State where school bus transportation of pupils to and from school is now being provided, such school transportation shall not be discontinued by any State or local governmental agency for the sole reason that the corporate limits of any municipality have been extended to include such area since February 6, 1957, and school bus transportation of pupils shall be continued in the same manner and to the same extent as if such area had not been included within the corporate limits of a municipality.

In each and every area of the State where school bus transportation of pupils to and from school is now being provided, such school transportation shall not be discontinued by any State or local governmental agency for the sole reason that two or more municipalities have consolidated and the corporate limits of the new, consolidated municipality includes such area, and school bus transportation of pupils shall be continued in the same manner and to the same extent as if such area had not been consolidated and had not been included within the corporate limits of the new, consolidated municipality. (1957, c. 1375; 1963, c. 917; c. 990, s. 4; 1965, c. 1095, s. 4; 1967, c. 877.)

**Editor's Note.—**

The 1967 amendment added the second paragraph.

## SUBCHAPTER XIA. COMPACT.

### ARTICLE 43.

#### *Interstate Compact for Education.*

§ 115-349. **Enactment of compact.**—The compact for education is hereby entered into and enacted into law, with all jurisdictions legally joining therein, in the form substantially as follows:

#### COMPACT FOR EDUCATION

Article 1. Policy and Purpose.

It is the purpose of this compact to:

- (1) Establish and maintain close cooperation and understanding among

executive, legislative, professional, educational and lay leadership on a nationwide basis at the state and local levels.

- (2) Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.
- (3) Provide a clearinghouse of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.
- (4) Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advances in educational opportunities, methods and facilities.
- (5) It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.
- (6) The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because of the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

#### Article II. State Defined.

As used in this compact, "state" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

#### Article III. The Commission.

- (1) The education commission of the states, hereinafter called "the commission," is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten nonvoting commissioners selected by the steering committee

for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

- (2) The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III (10).
- (3) The commission shall have a seal.
- (4) The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice-chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.
- (5) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.
- (6) The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.
- (7) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (6) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.
- (8) The commission may establish and maintain such facilities as may be necessary for the transaction of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.
- (9) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.
- (10) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for



the preceding year. The commission may make such additional reports as it may deem desirable.

#### Article IV. Powers.

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to :

- (1) Collect, correlate, analyze and interpret information and data concerning educational needs and resources.
- (2) Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.
- (3) Develop proposals for adequate financing of education as a whole and at each of its many levels.
- (4) Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.
- (5) Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.
- (6) Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

#### Article V. Cooperation with Federal Government.

- (1) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.
- (2) The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

#### Article VI. Committees.

- (1) To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of 32 members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One fourth of the voting membership of the steering committee shall consist of governors, one fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: 16 for one year and 16 for two years. The chairman, vice-chairman, and treasurer of the commission shall be members of the steering committee

and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two term limitation.

- (2) The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.
- (3) The commission may establish such additional committees as its bylaws may provide.

#### Article VII. Finance.

- (1) The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.
- (2) The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.
- (3) The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III (7) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III (7) thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.
- (4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.
- (5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.
- (6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

#### Article VIII. Eligible Parties; Entry into and Withdrawal.

- (1) This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not

having a governor, the term "governor," as used in this compact, shall mean the closest equivalent official of such jurisdiction.

- (2) Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least 10 eligible party jurisdictions shall be required.
- (3) Adoption of the compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.
- (4) Except for a withdrawal effective on December 31, 1967, in accordance with paragraph (3) of this article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

#### Article IX. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. (1967, c. 1020.)

**§ 115-350. Establishment of North Carolina Education Council.**—There is hereby established the North Carolina Education Council composed of the members of the education commission of the states representing this State, and not exceeding five other persons appointed by the Governor for terms of three years. Such other persons shall be selected so as to be broadly representative of professional and lay interests within this State having the responsibilities for, knowledge with respect to, and interest in educational matters. The Governor shall serve as chairman of the North Carolina Education Council or any person that the Governor may designate shall serve as chairman. The chairman of the State Board of Education, the State Superintendent of Public Instruction, the chairman of the State Board of Higher Education, and the Director of Higher Education shall be ex officio members of the North Carolina Education Council. The Council shall meet on the call of its chairman or at the request of a majority of its members, but in any event the Council shall meet not less than three times in each year. The Council may consider any and all matters relating to the recommendations of the education commission of the states and the activities of the members in representing this State thereon. (1967, c. 1020.)

**§ 115-351. Filing copy of bylaws with Secretary of State.**—Pursuant to Article III (9) of the compact, the commission shall file a copy of its bylaws and any amendment thereto with the Secretary of State of North Carolina. (1967, c. 1020.)



## SUBCHAPTER XII. EXPERIMENTATION AND RESEARCH.

## ARTICLE 44.

*North Carolina Advancement School.*

§ 115-352. **Continuation of North Carolina Advancement School by the State Board of Education.**—The State Board of Education shall have the responsibility of operating the North Carolina Advancement School at Winston Salem as a continuing phase of and in conjunction with the public school system of North Carolina. (1967, c. 1028, s. 2.)

**Editor's Note.** — Session Laws 1967, c. 1028, s. 4, makes the act effective July 1, 1967.

§ 115-353. **Purpose of the North Carolina Advancement School.**—The purpose of the North Carolina Advancement School is to provide a facility wherein there shall be carried on experimentation and research into the causes of and remedies for under achievement in the public schools of North Carolina. (1967, c. 1028, s. 2.)

§ 115-354. **Board of governors.**—The State Board of Education shall appoint and maintain for the school a governing board to be known as "the board of governors," which shall be composed of 10 citizens of the State, one of whom shall always be the superintendent of the Forsyth County-Winston Salem schools. Except for the superintendent of the Forsyth County-Winston Salem schools, the board members shall serve for terms of not more than three consecutive years. The board of governors shall select from its membership annually a chairman and vice-chairman, and such board shall meet at least four times each year upon the call of its chairman. Members of the board shall receive the same per diem and shall be reimbursed for their expenses in the same manner as other boards and commissions generally. The director of the School shall serve as secretary to the board. (1967, c. 1028, s. 2.)

§ 115-355. **Responsibilities of the board of governors.**—Subject to the general supervision of the State Board of Education, the board of governors shall have the responsibility for

- (1) Determining the policies which shall govern the administration and supervision of the school,
- (2) Observing and reviewing all phases of the school's operation, and
- (3) Reporting its findings and recommendations through the Superintendent of Public Instruction to the State Board of Education. (1967, c. 1028, s. 2.)

§ 115-356. **State Board of Education to appoint director.**—The State Board of Education shall appoint a director of the school who shall serve for such term, which may be indefinite, as the State Board shall determine. (1967, c. 1028, s. 2.)

§ 115-357. **Responsibilities of the director.**—In accordance with the policies of the board of governors, the director shall have responsibility for

- (1) Administering and directing all the affairs of the school,
- (2) Recommending to the board of governors the number and types of positions required to staff the school,
- (3) Selecting and recommending to the board of governors all personnel, including consultants to be employed or assigned to the school,
- (4) The development and implementation of the curriculum of the school,
- (5) Developing procedures which will insure the continuous evaluation of all aspects of the school and its progress,

- (6) Recommending for approval of the board of governors any rental or lease agreements affecting the facility wherein the school is located,
- (7) Preparing and submitting to the State Board of Education through the board of governors the recommended budget for the operation of the school,
- (8) Developing procedures and techniques which will promote the articulation and coordination of the program of the school with that of the public schools throughout the State, and
- (9) Reporting periodically and systematically to the board of governors and the State Board of Education on the status of the school, and performing such other duties as the board of governors from time to time may find appropriate to his administrative position. (1967, c. 1028, s. 2.)

**Cross Reference.**—See Editor's note to § 115-352.

## Chapter 115A.

### Community Colleges, Technical Institutes, and Industrial Education Centers.

#### Article 1.

#### Sec.

#### General Provisions for State Administration.

extension units of community college system; use of existing public school facilities.

Sec.

115A-5. Administration of institutions by State Board of Education; personnel exempt from State Personnel Act; contracting, etc., for establishment and operation of

#### Article 5.

#### Special Provisions.

115A-38.1. Special provisions for Onslow County Technical Institute.

### ARTICLE 1.

#### *General Provisions for State Administration.*

§ 115A-5. Administration of institutions by State Board of Education; personnel exempt from State Personnel Act; contracting, etc., for establishment and operation of extension units of community college system; use of existing public school facilities.—The State Board of Education may adopt and execute such policies, regulations and standards concerning the establishment and operation of institutions as the Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Education shall establish standards and scales for salaries and allotments paid from funds administered by the Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The Board shall have authority with respect to individual institutions: To approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees and financial accounting procedures.

The State Board of Education is authorized to enter into agreements with county and city boards of education, upon approval by the Governor and the Advisory Budget Commission, for the establishment and operation of extension units of the community college system. The State Board is further authorized to pro-

vide the financial support for operating and equipping extension units as provided in this chapter for other institutions, subject to available funds.

On petition of the board of education of the school administrative unit in which an institution is proposed to be established, the State Board of Education may approve the utilization by such proposed institution of existing public school facilities, if the Board finds:

- (1) That an adequate portion of such facilities can be devoted to the exclusive use of the institution, and
- (2) That such utilization will be consistent with sound educational considerations. (1963, c. 448, s. 23; 1967, c. 652.)

**Editor's Note.**—The 1967 amendment inserted the third paragraph.

## ARTICLE 5.

### *Special Provisions.*

**§ 115A-38.1. Special provisions for Onslow County Technical Institute.**—(a) The State Board of Education shall have authority to approve the conversion of the Onslow County Industrial Education Center to a technical institute, as defined in chapter 115A of the General Statutes of North Carolina.

(b) All local taxes heretofore authorized by the voters of Onslow County to be levied annually for the local financial support of the Onslow County Industrial Education Center may continue to be levied by the board of commissioners of Onslow County for the purpose of providing local financial support of the institution as a technical institute.

(c) The Onslow County board of education is authorized to transfer without compensation to the board of trustees of the Onslow County Industrial Education Center the title to any real and personal property held by the board of education as the two boards may agree upon, either before or after the institution is converted to a technical institute.

(d) In the event that the State Board of Education shall approve the conversion of the Onslow County Industrial Education Center to a technical institute, within sixty days after the Board grants final approval, the Governor shall appoint four additional members to the board of trustees of the Onslow County Technical Institute in accordance with the provisions of §§ 115A-7 and 115A-8 (1) of the General Statutes of North Carolina. (1967, c. 279.)



## Chapter 116. Higher Education.

### Article 1A.

#### Regional Universities.

Sec.

- 116-44.10. Regional universities.
- 116-44.11. East Carolina University.
- 116-44.12. Appalachian State University.
- 116-44.13. Western Carolina University.
- 116-44.14. North Carolina Agricultural and Technical State University.
- 116-44.15. Designation of additional regional universities.
- 116-44.16. Future policy with respect to regional universities.

### Article 2.

**Western Carolina University, East Carolina University, Appalachian State University, Pembroke State College, North Carolina Agricultural and Technical State University, North Carolina College of Durham, Elizabeth City State College, Fayetteville State College, Winston-Salem State College, Asheville-Biltmore College, Wilmington College.**

- 116-46.4. School of medicine authorized at East Carolina University; meeting requirements of accrediting agencies.

### Article 4.

#### School for Professional Training in Performing Arts.

Sec.

- 116-70. Applicable statutes generally; revenue bonds.
- 116-70.1. Other applicable statutes.

### Article 15.

#### Educational Advantages for Children of World War Veterans.

116-149 to 116-153. [Repealed.]

### Article 23.

#### State Education Assistance Authority.

- 116-209.1. Provisions in conflict.
- 116-209.2. Additional definitions.
- 116-209.3. Additional powers.
- 116-209.4. Authority to issue bonds.
- 116-209.5. Bond resolution.
- 116-209.6. Revenues.
- 116-209.7. Trust funds.
- 116-209.8. Remedies.
- 116-209.9. Negotiable instruments.
- 116-209.10. Bonds eligible for investment.
- 116-209.11. Additional pledge.
- 116-209.12. Credit of State not pledged.
- 116-209.13. Tax exemption.
- 116-209.14. Annual reports.
- 116-209.15. Merger of trust fund.

## ARTICLE 1.

### *The University of North Carolina.*

#### Part 4. Revenue Bonds for Service and Auxiliary Facilities.

**§ 116-41.4. Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds; replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State.**—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the University for the purpose of undertaking and carrying out any project or projects hereunder; provided, however, that the aggregate principal amount of revenue bonds which the board is authorized to issue under this section during the biennium ending June 30, 1969, shall not exceed three million five hundred thousand dollars (\$3,500,000). The bonds shall be dated, shall mature at such time or times not exceeding thirty years from their date or dates, and shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, as may be determined by the board, and may be made redeemable before maturity at the option of the board at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, and any interest coupons to be attached

thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this part or any recitals in any bonds issued under the provisions of this part, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six per centum (6%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the authorizing resolution, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the board under the provisions of this part, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this part.

Revenue bonds issued under the provisions of this part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1961, c. 1078, s. 4; 1963, c. 944, s. 2; 1965, c. 1033, s. 2; 1967, c. 724.)

Editor's Note.—

The 1967 amendment substituted "1969" for "1967" near the end of the first sentence.

## ARTICLE 1A.

*Regional Universities.*

§ 116-44.10. **Regional universities.**—(a) There shall be, in addition to The University of North Carolina as provided for in article 1 of this chapter, one or more regional universities, which shall be so designated by or pursuant to this article.

(b) The primary purpose of each regional university shall be the preparation of young men and women as teachers, supervisors, and administrators for the public schools of North Carolina, including the preparation of such persons for the master's degree. Said institutions may also offer instruction in the liberal arts and sciences including the preparation for the master's degree, may conduct programs of research that will increase their abilities to carry out and enlarge their stated responsibilities, extend their influence and usefulness as far as possible to persons of the area provided by the institutions who are unable to avail themselves of their advantages as resident students, to extension courses, by lectures, and by such other means as may seem to them most effective, and such other programs as are deemed necessary to meet the needs of their constituencies and of the State and as shall be approved by the North Carolina Board of Higher Education, consistent with appropriations made therefor.

(c) Each regional university shall have a board of trustees, president, and endowment fund which shall in all respects correspond to the board of trustees, president, and endowment fund as provided for in G.S. 116-46, with the substitution of the word "university" for the word "college" where appropriate.

(d) The provisions of G.S. 116-46.2 shall apply to each regional university.

(e) Upon the effective date of the redesignation of any college as a regional university by or pursuant to this article:

- (1) The members of the board of trustees and the officers of the institution shall continue in office for the remainder of their unexpired terms;
- (2) All references to that institution in statutes, contracts, and other legal documents, are amended to incorporate the new name of the institution;
- (3) Title to all assets and the duties imposed by all obligations of the institution under its former name shall continue unimpaired as assets and obligations of the redesignated institution. (1967, c. 1038.)

§ 116-44.11. **East Carolina University.**—Effective July 1, 1967:

- (1) East Carolina College is redesignated "East Carolina University," subject to the provisions of § 116-44.10 as herein set forth.
- (2) In all other statutes, the words "East Carolina College" are amended to read "East Carolina University." (1967, c. 1038.)

**Editor's Note.**—This section as enacted contained a subdivision (2), directing that amendments be made in the caption of article 2 of chapter 116 and in § 116-45, and a subdivision (3), directing that an amend-

ment be made in § 116-46.3. Since the amendments have been made as directed by these subdivisions, they are not set out herein, and original subdivision (4) has been renumbered subdivision (2).

§ 116-44.12. **Appalachian State University.**—Effective July 1, 1967:

- (1) Appalachian State Teachers College is redesignated "Appalachian State University," subject to the provisions of § 116-44.10 as herein set forth.
- (2) In all other statutes, the words "Appalachian State Teachers College" are amended to read "Appalachian State University." (1967, c. 1038.)

**Editor's Note.**—This section as enacted contained a subdivision (2), directing that amendments be made in the caption of article 2 of chapter 116 and in § 116-45, and a subdivision (3), directing that an amend-

ment be made in § 116-46.3. Since the amendments have been made as directed by these subdivisions, they are not set out herein, and original subdivision (4) has been renumbered subdivision (2).



§ 116-44.13. **Western Carolina University.**—Effective July 1, 1967:

- (1) Western Carolina College is redesignated "Western Carolina University," subject to the provisions of § 116-44.10 as herein set forth.
- (2) In all other statutes, the words "Western Carolina College" are amended to read "Western Carolina University." (1967, c. 1038.)

**Editor's Note.**—This section as enacted contained a subdivision (2), directing that amendments be made in the caption of article 2 of chapter 116 and in § 116-45, and a subdivision (3), directing that an amend-

ment be made in § 116-46.3. Since the amendments have been made as directed by these subdivisions, they are not set out herein, and original subdivision (4) has been renumbered subdivision (2).

§ 116-44.14. **North Carolina Agricultural and Technical State University.**—Effective July 1, 1967:

- (1) Agricultural and Technical College of North Carolina is redesignated "North Carolina Agricultural and Technical State University," subject to the provision of § 116-44.10 as herein set forth.
- (2) In all other statutes and captions thereof, the words "Agricultural and Technical College of North Carolina" are amended to read "North Carolina Agricultural and Technical State University." (1967, c. 1038.)

**Editor's Note.**—This section as enacted contained a subdivision (2), directing that an amendment be made in § 116-46.3. Since the amendment has been made as directed

by the subdivision, it is not set out herein, and original subdivision (3) has been renumbered subdivision (2).

§ 116-44.15. **Designation of additional regional universities.**—The board of trustees of any college that operates under the provisions of article 2 of this chapter and that for at least 10 years has been authorized to grant the master's degree, and is also subject to the provisions of G.S. 116-46.3, may apply to the Board of Higher Education, requesting the redesignation of that college as a regional university pursuant to this article. After making such study as it may find necessary, the Board of Higher Education shall make a report to the next regular session of the General Assembly, setting forth its findings and recommendations on the requested redesignation. The General Assembly thereupon shall make such disposition of the matter as it shall deem appropriate; provided, however, that this section shall not prevent any college designated under article 2 of this chapter from applying for any program of affiliation, change in status or other reorganization program, not inconsistent with the provisions of this article. (1967, c. 1038.)

§ 116-44.16. **Future policy with respect to regional universities.**—Not later than July 1, 1972, the State Board of Higher Education pursuant to this article shall study the effectiveness of the regional universities and their proper future role and status in the State system of public higher education, and shall make a report to the General Assembly setting forth its findings and recommendations on that subject. The study shall include, but not be limited to, consideration of the continuation of the existing arrangements, the establishment of a single board of trustees for all regional universities, and the conversion of one or more of the regional universities into campuses of the University of North Carolina. (1967, c. 1038.)

## ARTICLE 2.

*Western Carolina University, East Carolina University, Appalachian State University, Pembroke State College, North Carolina Agricultural and Technical State University, North Carolina College of Durham, Elizabeth City State College, Fayetteville State College, Winston-Salem State College, Asheville-Biltmore College, Wilmington College.*

**§ 116-45. Primary purpose of named institutions.**

(1): Repealed by Session Laws 1967, c. 1038.

**Editor's Note.—**

The 1967 amendment deleted "Appalachian State Teachers College," "East Carolina College" and "Western Carolina College" in the caption to this article and in the first sentence of subdivision (1) of

this section. Since the subdivision applied only to those three institutions, the effect of the 1967 act was to eliminate the subdivision.

As the rest of the section was not affected by the amendment, it is not set out.

**§ 116-46.3. Participation in sixth-year program of graduate instruction for superintendents, assistant superintendents, and principals of public schools.**—Notwithstanding any other provision of law or the regulations of any administrative agency the educational institutions of North Carolina College of Durham, North Carolina Agricultural and Technical State University, Appalachian State University, and Western Carolina University, are hereby authorized and shall be eligible colleges to participate in the sixth-year program adopted by the State Board of Education February 4, 1965, to provide a minimum of 60 semester hours of approved graduate, planned, nonduplicating instruction not beyond the masters degree for the education of superintendents, assistant superintendents, and principals of public schools. The satisfactory completion of such program and instruction shall qualify a person for the same certificate and stipend as now provided for other eligible educational institutions. (1965, c. 632; 1967, c. 1038.)

**Editor's Note.** — The 1967 amendment deleted "East Carolina College," substituted "Appalachian State University" for "Appalachian State Teachers College," substituted "Western Carolina University"

for "Western Carolina College" and inserted "North Carolina Agricultural and Technical State University" all in the first sentence.

**§ 116-46.4. School of medicine authorized at East Carolina University; meeting requirements of accrediting agencies.**—The board of trustees of East Carolina University is hereby authorized to create a school of medicine at East Carolina University, Greenville, North Carolina.

The school of medicine shall meet all requirements and regulations of the Council on Medical Education and Hospitals of the American Medical Association. The Association of American Medical Colleges, and other such accrediting agencies whose approval is normally required for the establishment and operation of a two-year medical school. (1965, c. 986, ss. 1, 2; 1967, c. 1038.)

**Editor's Note.—**

The 1967 amendment substituted "East

Carolina University" for "East Carolina College."

## ARTICLE 4.

*School for Professional Training in Performing Arts.*

**§ 116-70. Applicable statutes generally; revenue bonds.**—The school is hereby declared to be a state-supported institution of higher learning within the meaning of article 21 of chapter 116 of the General Statutes of North Carolina, the same as if the school were enumerated in said article 21 or in G.S. 116-45, and all

of the provisions of said article 21 are hereby made applicable to the school and its board of trustees.

In addition to the powers conferred thereon by this section and G.S. 116-66, the board of trustees, subject to the approval of the Advisory Budget Commission, is hereby authorized to issue from time to time revenue bonds of said board for the purpose of providing funds, with any other available funds, for acquiring dormitory facilities presently being leased by the school. (1967, c. 1040, s. 1.)

**Editor's Note.** — The 1967 amendment renumbered former § 116-70 as § 116-71 but since a § 116-71 had been added by Session Laws 1965, c. 1148, s. 1, former § 116-70 has been designated § 116-70.1 herein.

Session Laws 1967, c. 1040, s. 2, provides: "The powers conferred by this act shall be regarded as supplemental and in addition to powers conferred by all other laws and shall not supplant or repeal any powers conferred by any other law."

**§ 116-70.1. Other applicable statutes.** — All of the powers, duties and responsibilities herein conferred shall be subject to the provisions of article 1, chapter 143 of the General Statutes, entitled "Executive Budget Act," and article 2, chapter 143 of the General Statutes, entitled "State Personnel Department." (1963, c. 1116; 1967, c. 1040, s. 3.)

**Cross Reference.**—See Editor's note to § 116-70.

#### ARTICLE 15.

##### *Educational Advantages for Children of World War Veterans.*

§§ 116-149, 116-149.1: Repealed by Session Laws 1967, c. 1060, s. 10, effective July 1, 1967.

§ 116-150: Repealed by Session Laws 1967, c. 1060, s. 10, effective July 1, 1967.

##### **Editor's Note.**—

Session Laws 1967, c. 1060, s. 9, effective July 1, 1967, provides: "Those persons who have been granted a scholarship under the proviso of G.S. 116-150, as the same appears in 1966 Replacement Volume 3A of the General Statutes, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in Class I-B, as that class is defined in

G.S. 165-22 (a) (2). All other persons who have been granted a scholarship under G.S. 116-150, as the same appears in the 1966 Replacement Volume 3A of the General Statutes, excluding those covered by the proviso referred to in the preceding sentence, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in G.S. 165-21."

§§ 116-151 to 116-153: Repealed by Session Laws 1967, c. 1060, s. 10, effective July 1, 1967.

#### ARTICLE 21.

##### *Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.*

**§ 116-187. Purpose of article.**—The purpose of this article is to authorize the boards of trustees of the educational institutions designated herein to issue revenue bonds, payable from rentals, charges, fees (including student fees) and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or in part, of buildings and other facilities for the housing, health, welfare, recreation and convenience of students enrolled at said institutions, housing of faculty, and for revenue-producing parking decks or structures. (1963, c. 847, s. 1; 1967, c. 1148, s. 1.)

**Editor's Note.** — The 1967 amendment added "housing of faculty, and for revenue-

producing parking decks or structures" at the end of this section.



## § 116-189. Definitions.

- (5) The word "project" shall mean and shall include any one or more buildings or facilities for student housing, student activities, physical education or recreation of any size or type approved by the board and the Advisory Budget Commission and any enlargements, improvements or additions so approved of or to any such buildings or facilities now or hereafter existing, including, but without limiting the generality thereof, dormitories and other student housing, dining facilities, student centers, gymnasiums, field houses and other physical education and recreation buildings, structures and facilities, and necessary land and interests in land, furnishings, equipment and parking facilities. Any project comprising a building or buildings for student activities or any enlargement or improvement thereof or addition thereto may include, without limiting the generality thereof, facilities for student services such as lounges, rest rooms, lockers, offices, stores for books and supplies, snack bars, cafeterias, restaurants, laundries, cleaning, postal, banking and similar student services, offices, rooms and other facilities for guests and visitors and facilities for meetings and for recreational, cultural and entertainment activities. The word "project" shall also mean and shall include any one or more buildings or facilities for faculty housing and revenue-producing parking decks or structures, of any size or type approved by the board and the Advisory Budget Commission and any enlargements, improvements or additions so approved of or to any such buildings or facilities now or hereafter existing, and including necessary land and interests in land, furnishings, equipment, and parking facilities.

(1967, c. 1148, s. 2.)

## Editor's Note.—

The 1967 amendment added the last sentence in subdivision (5). As the rest of the section was not affected by the amendment, it is not set out.

## ARTICLE 23.

*State Education Assistance Authority.*

§ 116-202. **Authority may buy and sell students' obligations; undertakings of Authority limited to revenues.**—In order to facilitate the vocational and college education of residents of this State and to promote the industrial and economic development of the State, the State Education Assistance Authority (hereinafter created) is hereby authorized and empowered to buy and sell obligations of students attending institutions of higher education or post-secondary business, trade, technical, and other vocational schools, which obligations represent loans made to such students for the purpose of obtaining training or education.

No act or undertaking of the Authority shall be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds of the Authority. All such acts and undertakings shall contain on the face thereof a statement to the effect that neither the State nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the Authority and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such acts and undertakings.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the provisions of this article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to

which moneys shall have been provided under the provisions of this article. (1965, c. 1180, s. 1; 1967, c. 955, s. 1.)

**Editor's Note.** — The 1967 amendment inserted "vocational and" near the beginning of the section, substituted "attending institutions of higher education or post-secondary business, trade, technical, and other vocational schools, which obligations

represent" for "at institutions of higher education representing" in the first paragraph and substituted "training or" for "an" preceding "education" at the end of that paragraph.

**§ 116-206. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.**—With the funds available to the Authority, for purposes other than the payment of personnel and the lease or rental of offices or equipment, the Authority may acquire from any bank or other lending institution a contingent interest of one hundred percent (100%) of any individual obligation; the total contingent interest of the Authority on all such obligations shall not exceed at any one time a sum equal to twelve and one-half times the total funds which the Authority can employ to acquire such contingent interests. When the Authority acquires any such contingent interest, it may require the payment to it of a portion of the interest payable upon any such obligation. In each such acquisition, the Authority shall provide that at such time as the obligation becomes delinquent, the bank or other lending institution shall notify the Authority forthwith, and shall transfer forthwith to the Authority, by assignment or otherwise, an interest in such obligation equal to the contingent interest of the Authority therein. The bank or other lending institution and the Authority shall forthwith take such steps as may be necessary to recover the balance due upon any such obligation; any such recovery shall be apportioned between the Authority and the bank or other lending institution as their respective interests may appear. (1965, c. 1180, s. 1; 1967, c. 955, s. 2.)

**Editor's Note.** — The 1967 amendment substituted "of one hundred percent (100%)" for "not exceeding eighty percent (80%)" in that sentence.

**§ 116-209.1. Provisions in conflict.**—Any of the foregoing provisions of this act which shall be in conflict with the provisions hereinbelow set forth shall be repealed to the extent of such conflict. (1967, c. 1177.)

**§ 116-209.2. Additional definitions.**—As used in this act the term "eligible institution" shall have the same meaning as the definition of such term in section 996 and section 1085 of Title 20 of the United States Code and the term "student loan" shall mean loans to residents of this State to enable them to obtain an education in an eligible institution. (1967, c. 1177.)

**§ 116-209.3. Additional powers.**—The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this act and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated "State Education Assistance Authority Loan Fund" (the "Loan Fund") which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive

of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. (1967, c. 1177.)

**§ 116-209.4. Authority to issue bonds.**—The Authority is hereby authorized to provide for the issuance, at one time or from time to time, of revenue bonds of the Authority in an aggregate principal amount outstanding at any time of not exceeding twelve and one-half million dollars. The bonds shall be designated, subject to such additions or changes as the Authority deems advisable, "State Education Assistance Authority Revenue Bonds, Series . . . . .," inserting in the blank space a letter identifying the particular series of bonds.

The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding 20 years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Authority may also provide for the authentication of the bonds by a fiscal agent. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effectuate the purposes of this act.

The Authority is authorized to provide in any resolution authorizing the issuance of bonds for pledging or assigning as security for its revenue bonds, subject to any prior pledge or assignment, and for deposit to the credit of the sinking fund, any or all of its income, receipts, funds or other assets, exclusive of bond proceeds and other funds required to be deposited to the credit of the Loan Fund, of whatsoever kind from time to time acquired or owned by the Authority, including all donations, grants and other money or property made available to it, payments received on student loans, such as principal, interest and penalties, if any, premiums on student loan insurance, fees, charges and other income derived from services rendered or otherwise, proceeds of property or insurance, earnings and profits on investments of funds and from sales, purchases, endorsements or guarantees of obligations, as defined in § 116-201 hereof, and other securities and instruments, contract rights, any funds, rights, insurance or other benefits acquired pursuant to any federal law or contract to the extent not in conflict therewith, money recovered through the enforcement of any remedies or rights, and any other funds or things of value which in the determination of the Authority may enhance the marketability of its revenue bonds. Money in the sinking fund shall be disbursed in such manner and under such restrictions as the Authority may provide in the resolution authorizing the issuance of such



bonds. Unless otherwise provided in the bond resolution, the revenue bonds at any time issued hereunder shall be entitled to payment from the sinking fund without preference or priority of the bonds first issued. Bonds may be issued under the provisions of this act without obtaining, except as otherwise expressly provided in this act, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this act and the provisions of the resolution authorizing the issuance of such bonds. (1967, c. 1177.)

§ 116-209.5. **Bond resolution.**—The resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the purchase or sale of obligations, the making of student loans, the insurance of student loans, the fees, charges and premiums to be fixed and collected, the terms and conditions for the issuance of additional bonds and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such resolution may set forth the rights and remedies of the bondholders and may restrict the individual right of action by bondholders. All expenses incurred in carrying out the provisions of such resolution may be treated as a part of the cost of administering this act and may be payable, together with other expenses of operation and administration under this act incurred by the Authority, from the Loan Fund. (1967, c. 1177.)

§ 116-209.6. **Revenues.**—The Authority is authorized to fix and collect fees, charges, interest and premiums for making or insuring student loans, purchasing, endorsing or guaranteeing obligations and any other services performed under this act. The Authority is further authorized to contract with the United States of America or any agency or officer thereof and with any person, partnership, association, banking institution or other corporation respecting the carrying out of the Authority's functions under this act. The Authority shall at all times endeavor to fix and collect such fees, charges, receipts, premiums and other income so as to have available in the sinking fund at all times an amount which, together with any other funds made available therefor, shall be sufficient to pay the principal of and the interest on such bonds as the same shall become due and payable and to create reserves for such purposes. Money in the sinking fund, except such part thereof as may be necessary to provide such reserves for the bonds as may be provided for in the resolution authorizing the issuance of such bonds, shall be set aside in the sinking fund at such regular intervals as may be provided in such resolution and is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees, charges, receipts, proceeds and other revenues and moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. The resolution by which a pledge is created need not be filed or recorded except in the records of the Authority. The use and disposition of money to the credit of the sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds. Any such resolution may, in the discretion of the Authority, provide for the transfer of sur-

plus money in the sinking fund to the credit of the Loan Fund. Except as may otherwise be provided in such resolution, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1967, c. 1177.)

§ 116-209.7. **Trust funds.**—Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of the act, whether as proceeds from the sale of bonds, sale of property or insurance, or as payments of student loans, whether principal, interest or penalties, if any, thereon, or as insurance premiums, or from the purchase or sale of obligations, or as any other receipts or revenues derived hereunder, shall be deemed to be trust funds to be held and applied solely as provided in this act. The resolution authorizing the bonds of any issue may provide that any of such money may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof, subject to such regulations as this act and such resolution may provide. (1967, c. 1177.)

§ 116-209.8. **Remedies.**—Any holder of bonds issued under the provisions of this act or any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by such resolution authorizing the issuance of such bonds, may either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution authorizing the issuance of such bonds, or under any contract executed by the Authority pursuant to this act, and may enforce and compel the performance of all duties required by this act or by such resolution to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of fees, charges and premiums and the collection of principal, interest and penalties, if any, on student loans or obligations evidencing such loans. (1967, c. 1177.)

§ 116-209.9. **Negotiable instruments.**—Notwithstanding any of the foregoing provisions of this act or any recitals in any bonds issued under the provisions of this act, all such revenue bonds and interest coupons appertaining thereto shall be and are hereby made negotiable instruments under the laws of this State. (1967, c. 1177.)

§ 116-209.10. **Bonds eligible for investment.**—Bonds issued by the Authority under the provisions of this act are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1967, c. 1177.)

§ 116-209.11. **Additional pledge.**—Notwithstanding any other provision to the contrary herein, the Authority is hereby authorized to pledge as security for any bonds issued hereunder any contract between the Authority and the United States of America under which the United States agrees to make funds available to the Authority for any of the purposes of this act, to insure or guarantee the payment of interest or principal on student loans, or otherwise to aid in promoting or facilitating student loans. (1967, c. 1177.)

§ 116-209.12. **Credit of State not pledged.**—Bonds issued under the provisions of this act shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and

credit of the State or of any such political subdivision, but shall be payable solely from the revenues and other funds provided therefor. Each bond issued under this act shall contain on the face thereof a statement to the effect that the Authority shall not be obligated to pay the same nor the interest thereon except from the revenues, proceeds and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. Expenses incurred by the Authority in carrying out the provisions of this act may be made payable from funds provided pursuant to this act and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been so provided. (1967, c. 1177.)

**§ 116-209.13. Tax exemption.**—The exercise of the powers granted by this act in all respects will be for the benefit of the people of the State, for their well being and prosperity and for the improvement of their social and economic conditions, and the Authority shall not be required to pay any taxes on any property owned by the Authority under the provisions of this act or upon the income therefrom, and the bonds issued under the provisions of this act, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes. (1967, c. 1177.)

**§ 116-209.14. Annual reports.**—The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the General Assembly. Each such report shall set forth a complete operating and financial statement covering the operations of the Authority during such year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by the State Auditor or by certified public accountants. (1967, c. 1177.)

**§ 116-209.15. Merger of trust fund.**—The Authority may merge into the Loan Fund the trust fund established pursuant to § 116-209 hereof and may transfer from such trust fund to the credit of the Loan Fund all money, investments and other assets and resources credited to such trust fund, for application and use in accordance with the provisions of this act pertaining to the Loan Fund, including the power to pay expenses of the Authority from the Loan Fund to the extent that other funds are not available therefor. (1967, c. 1177.)

## STATE OF NORTH CAROLINA

### DEPARTMENT OF JUSTICE

Raleigh, North Carolina

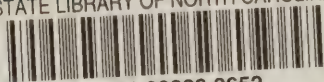
*November 1, 1967*

I, Thomas Wade Bruton, Attorney General of North Carolina do hereby certify that the foregoing 1967 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

THOMAS WADE BRUTON  
*Attorney General of North Carolina*



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